REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON LAW AND SAFETY

INQUIRY INTO THE ADEQUACY OF YOUTH DIVERSIONARY PROGRAMS IN NSW

At Macquarie Room, Parliament House, Sydney on Monday, 30 April 2018

The Committee met at 11:00 am

PRESENT

Mr Geoff Provest (Chair)

Ms Steph Cooke (Deputy Chair)
Mr Edmond Atalla
Ms Jenny Leong
Mr Damien Tudehope

The CHAIR: Good morning. Thank you for attending this public hearing of the Committee on Law and Safety. This is the first hearing in connection with the Committee's inquiry into the adequacy of youth diversionary programs. I am Geoff Provest, the member for Tweed, and I am the Chair of the Committee. Ms Steph Cooke, the Member for Cootamundra, is the Deputy Chair. We are joined by Mr Damien Tudehope, the Member for Epping; Mr Edmond Atalla, the Member for Mount Druitt; and Ms Jenny Leong, the Member for Newtown. This morning the Committee will hear from the President of the Children's Court of New South Wales and a representative of Legal Aid NSW. The Committee will then break for lunch before hearing from Mission Australia, the Public Interest Advocacy Centre, Dr Vicki Sentas from the University of New South Wales, and the NSW Council of Social Service. Following afternoon tea, we will hear from representatives of the Aboriginal Legal Service, and the NSW Bar Association.

I thank the witnesses for making themselves available to appear today. I remind everyone to switch off their mobile phones because they can interfere with the recording equipment. For the benefit of the public gallery, I note that the Committee has resolved to authorise the media to broadcast sound and video excerpts of the public hearings. Copies of the guidelines governing the coverage of proceedings are available. I now declare the hearing open.

PETER JOHNSTONE, President, Children's Court of New South Wales, sworn and examined

The CHAIR: I welcome the President of the Children's Court of New South Wales, Judge Peter Johnstone, and thank him for appearing before the Committee today. Mr Johnstone, do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Judge JOHNSTONE: No.

The CHAIR: Please state the capacity in which you are appearing before the Committee.

Judge JOHNSTONE: I am a judge of the District Court of New South Wales, currently serving as the President of the Children's Court of New South Wales.

The CHAIR: Would you like to make a brief opening statement before the commencement of questions?

Judge JOHNSTONE: Yes. I acknowledge the traditional occupiers of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their elders, past, present, and, I add, emerging, because we see a number of elders emerging in our court. I thank the Committee for inviting me to give evidence. This inquiry is extremely important because of the subject matter it addresses, and it is very timely. The Children's Court views diversion as possibly the most important aspect of its work, and it sees imprisonment as very much a last-resort option for children who commit crimes.

There is now a considerable body of evidence as to the long-term deleterious effect of incarceration on young people. Studies show that imprisonment is no more effective than community-based sanctions and options in reducing crime. For those reasons, we see imprisonment or detention as something to be used only as an absolute last resort. We see diversion as a process rather than a standalone intervention; it is something that happens across the entire journey of a young person into adulthood. Diversion is important to us and we are very pleased to be here to provide as much information as we can.

The Children's Court is a standalone specialist jurisdiction that has a long history dating back to legislation enacted in the 1850s, and more recently the establishment of specialist children's magistrates in about 1915. We have 15 specialist magistrates in the jurisdiction, plus myself as the President. They are in seven locations across New South Wales covering most of the east coast from Lismore down to Port Kembla and Nowra. In addition to the seven permanent locations, we have four regional circuits covering the Upper Hunter, the mid North Coast, the inner western region and the Riverina.

At the moment, the Children's Court specialist magistrates cover only 67 per cent of youth crime in the State. It is my wish and my desire that we extend the jurisdiction or the coverage of the specialist magistrates to the entire State, and particularly into those regions where we do not have a full-time presence. For that we will need additional resources. However, we would argue that the savings achieved as a result of the closure over the past five years of three detention centres should be reinvested in things such as increased casework, more resources for the Children's Court and all of the associated agencies that work with the court rather than being spent on gaols for adults. We would argue that every child who avoids contact with the justice system is a child diverted.

I will highlight five key themes for the Children's Court. The first and most obvious is the overrepresentation of Aboriginal children in the youth justice system, which is estimated to be about 60 per cent of the children with whom we deal. We certainly know that of the children now in detention 60 per cent are Aboriginal. Secondly, as I mentioned, we want to see an expansion of the Children's Court specialist services and casework across the State so that we have 100 per cent coverage, particularly in some of the remote regions of New South Wales. That includes not only the specialist magistrates who do the work but also specialist police prosecutors, specialist lawyers who appear for the young people in the jurisdiction, specialist services and casework support such as things like Youth on Track, the Family Investment Model, Police Citizen Youth Club [PCYC] facilities in various regional locations, the Children's Court Assistance Scheme and the Legal Aid NSW Children's Legal Service.

Thirdly, the Young Offenders Act 1997 is a very important process for diversion of young people, particularly at the police level. At the moment in New South Wales, only about 20 per cent of children are diverted by police. In New Zealand, that figure is about 80 per cent. Unfortunately, over the past six years the utilisation of the Young Offenders Act by the police has dropped by about 50 per cent. We would like to know whether that is a function of a decrease in crime or a decrease in police taking up that option.

Fourthly, there are education issues. We have been campaigning for about two or three years after the realisation that something like 60 per cent of the children who commit crimes and who come before the Children's Court in New South Wales are not attending school at all. I am not talking about suspensions or expulsions; I am talking about kids we think are in a cohort of which the Department of Education is simply unaware. That is a real issue. If we reduced that 60 per cent to 30 per cent, we would probably reduce the youth crime rate in New South Wales by many percentage points.

We have been advocating with the Department of Education for the provision of what we call education justice liaison officers along the lines of the Victorian model where there is an education department person present at court and if a child comes to court who is not attending some sort of educational facility, their job is to get them enrolled in something.

The fifth and final key issue for us is services and resources, especially in rural regions, and more particularly in relation to alcohol and other drugs [AOD]. In relation to drug problems in particular we see the facilities available for young people in the State as inadequate, particularly residential facilities, and in the western suburbs of New South Wales where we have some of the highest crime rates that are based on drug addiction—nothing.

Those are the five key themes that I would like to address by way of introduction. Other than that, I am happy to address anything you would like to ask me about.

The CHAIR: Thank you. I will start with a couple of questions followed by Committee members. The Committee has heard that youth justice conferences have been underutilised and outcomes plans are not being properly developed and resourced, particularly in regional areas. The Committee has also heard that there are limited referral options for the programs. You have covered that a little but do you have any further comments?

Judge JOHNSTONE: Yes. Youth Justice Conferences is one of the components of the Young Offenders Act in respect of which the drop-off rate is about 50 per cent over the past six years, so it is totally underutilised. In some local area commands the uptake of the Young Offenders Act and referral of children to youth justice conferences are very high. For example, Port Macquarie is the second highest local area command in New South Wales for the use of youth justice conferences. Other local area commands have nothing; they do not even have qualified people to chair those types of committees. Each of those youth justice conferences is chaired by a convener and there are some towns in New South Wales where there are not even any qualified people and the infrastructure for the use of these youth justice conferences has just fallen away completely.

That was the thing we discovered when we started our circuit in the Upper Hunter. In some of the towns there the usage of youth justice conferences had reduced to nil and we found that very disturbing. I have been asking the police commissioner for four or five years because every local area command is supposed to have a full-time youth liaison officer [YLO] and some local area commands do have a young youth liaison officer but it is 10 per cent of their duties. We advocate that every youth liaison officer have, as part of their responsibility, to be full time.

In relation to youth justice conferences perhaps in some regions—and I cannot answer this one particularly accurately—there might be some places where the availability of options for children to engage in services is more limited and that is probably the case, but on the other hand for a youth justice conference to be effective it does not always need to have services available to assist the children, but that is not ideal. It is part of what I am talking about in increasing the available resources and services in regional centres that you would have options available for children to engage in. What I would like to see, for example, is expansion of things like Youth on Track and increased presence of Police Citizens Youth Club [PCYC] facilities in country regions. I went to Walgett a couple of weeks ago. That town has a small PCYC, so small that it can only service kids from about the age of 14 to 18 whereas if they had a bigger facility they could service all of the kids in that community. That, as you are probably all aware, is a community that is crying out for assistance in youth issues.

The CHAIR: Currently referrals to Youth on Track must be made by police or schools. Should other referral pathways be considered, for example, through Health?

Judge JOHNSTONE: Yes, and schools.

The CHAIR: And schools.

Judge JOHNSTONE: I think schools are already on the list.

Mr DAMIEN TUDEHOPE: It is.

The CHAIR: Yes, schools are on the list, but Health or any of the other agencies?

Judge JOHNSTONE: Yes, Health, Justice Health—any agency should be able to refer.

The CHAIR: Legal Aid has told the Committee that a scheme like Youth on Track, which relies on referrals from police officers, may struggle at times to engage Aboriginal young people. Would you concur with that?

Judge JOHNSTONE: That is probably a general comment. All agencies sometimes struggle to engage with Aboriginal young people. It is just part of the problem. On the other hand, I have seen some very good caseworkers who do engage regularly with Aboriginal children, particularly the Youth on Track in Kempsey. They have quite a number of Aboriginal families they are dealing with in their caseload.

Ms JENNY LEONG: I appreciate the summary of where things are at as a starting point. Obviously the start figure on the overrepresentation of Aboriginal young people connected with the criminal justice system is a key concern. Can you point to the immediate either legislative or policy changes that could attempt to reduce that, either through successful trials and examples in one place or because we know the evidence is there but it just has not been realised? Can you point to any key changes that could be made immediately as a matter of legislative change or policy to try to reduce that figure?

Judge JOHNSTONE: That is a big topic.

Ms JENNY LEONG: I appreciate that.

Judge JOHNSTONE: I have always said that the issue of Aboriginal overrepresentation is a whole-of-community problem. Insofar as the Children's Court is concerned, we are dealing with the back end of it. We have done things to try to ameliorate the situation, for example, our Youth Koori Court. As you know, we are in a dialogue with the Attorney General, Mr Speakman, to expand the operation of the Youth Koori Court beyond the trial at Parramatta to places like Surry Hills and Dubbo where the police Minister has already given his agreement to us commencing a court there.

In regard to what the Children's Court is doing, yes, we are very keen to expand that operation. The other thing that I would say in answer to your question is that it is known data that 40 per cent of kids in out-of-home care cross over into crime. We have what we call a crossover kids phenomenon where a large proportion of the children we see are in out-of-home care or in the care of the Minister. So in addressing the overrepresentation as an immediate thing, I would be referring to the recent report of the Federal Australian Law Reform Commission which includes some good recommendations that I endorse.

More particularly, we would like to see, as part of the things I am talking about, more community-based options being implemented where there are high levels of Aboriginal populations as a percentage in places like Walgett, Bourke, Moree and Tamworth—some of those areas where the Children's Court does not even have a presence, does not even have a specialist magistrate. Those are some of the immediate things that I would suggest.

Ms JENNY LEONG: You mention in your submission that there have been ongoing discussions with the NSW Police Force to ensure that police officers have specialist training. With respect to the examples you provided in your introduction as to the distinction across local area commands, what do you see as immediate policy or legislative changes that could address the way that police are adhering to the international rights of the child obligations through to general practices and making sure that people have access to programs in New South Wales?

Judge JOHNSTONE: Yes. Perhaps one of the better ways I could answer that question is to tell you about my trip to Broken Hill two weeks ago.

Ms JENNY LEONG: Please do. I always like hearing about a trip to Broken Hill.

Judge JOHNSTONE: It was my first time to Broken Hill, which I enjoyed. I was up there doing some care cases but there was a fresh custody of a young Aboriginal man who was charged with a crime. In the Children's Court at Parramatta, for example, we have a protocol with the police where we would all sit down. They do not wear uniforms; they certainly do not bring their appointments into court. So into my court marched four policemen bringing this young 17-year-old boy to court; they all had their appointments and their uniforms on. So I just sent them all away to take their guns off and put them into the gun locker; they were not very happy about that. But that is just a very small example of what happens in country regions where we do not have specialist practitioners, caseworkers and police dealing with children. It just gets lost in the Local Court procedures where a lot of the children's procedures and the more sensitive processes we have just get forgotten. In terms of immediate changes, again it comes back to what I am suggesting that we do in some of the country regions. It involves a little bit of a cultural change in some of those places to assist in reducing the Aboriginal over-representation. So you will get some very sympathetic local area commanders such as the one at Bourke where a justice re-investment program is taking place. That works really well in that particular community. But

then you will get others where we are still dealing with what I might say are historical approaches to Aboriginal issues.

Ms JENNY LEONG: I wish to know your thoughts on the calls around increasing the age. We have received a number of submissions supporting increasing the age, both for people being able to be held responsible for criminal actions but also in their ability to be detained. Can you tell the Committee about a limit to the number of cautions that police are allowed to give young offenders?

Judge JOHNSTONE: There is no limit that I am aware of, is there? Basically, there is a rule of thumb that they only give three.

Ms JENNY LEONG: There are three, yes.

Judge JOHNSTONE: One of the submissions that we would make is that we want complete discretionary capacity in relation to all those types of things, and so should the police. If the police want to give a fourth caution why should they not give a fourth caution? If they think that it is going to be effective, then I would unfetter those sorts of restrictions. Similarly, in relation to the Young Offenders Act, I would unfetter the types of crimes. At the moment, there are restrictions on the sorts of crimes that can be utilised under the Young Offenders Act and for youth justice conferences. One of the annexures to our submission is a submission we made to the Attorney a couple of years ago about making those sorts of things more flexible.

As to the other part of your question, I will give a preface in relation to the age issue by telling you—and I think it is in the submission—how important we believe is the emerging evidence in relation to brain development in adolescents. A lot of what we are doing, or are trying to do in the Children's Court, is now based on our understanding of the development of the adolescent brain. As children are growing up in their teens they do not use the frontal lobes to the fullest extent, so they are doing stupid things. We can give the Committee all sorts of examples as to why child crime can differ from adult crime based on this underdevelopment of the brain or the non-use of the frontal lobes as opposed to the hippocampus, which is that part of the brain that is emotional. That is just the background. Based on that sort of evidence, we are very supportive of raising the age of criminal responsibility and raising the age for control orders—in other words, putting children into gaol.

But—and there is a very big "but"—behind that process of changing or diverting is effectively another diversionary mechanism. It is saying that children up to the age of 12 cannot commit a crime. At the moment, it is 10. You have to have proper processes in place to deal with those children who have committed a wrong that adequately deals with and addresses their criminogenic tendencies. Otherwise they are only going to continue to do what they are doing, come back at the age of 13 and commit worse crimes. It is one thing to say, "Raise the age to 12", and it is another thing to say, "What are you going to do with those children?" At the moment, I am not aware of any formalised process for dealing with children under the age of 10. There is not one. So what do we do with children under 10? They tend to be dealt with by police.

Do not get me wrong, I have a lot of respect for the police. I think particularly over the last five years or so they have become a lot more therapeutic and responsive in relation to the way they deal with children. I think that has led to the huge reduction in youth detention that we now have, or is a contributing factor. But I do not think those children under 10 who have had what would otherwise be criminal episodes should be dealt with by police. They should be dealt with by other services such as Community Services. So, yes, I would raise the age for criminal responsibility to 12, but I would make sure that there is a system behind that which enables us to work with those children to address their problems. Likewise, I would support raising the age for incarceration to 14, but that is again on the basis that we have appropriate and sufficient community-based programs to look after those children.

Mr EDMOND ATALLA: I was interested in some of the statistics that you quoted in your opening remarks about the Aboriginal representation of 60 per cent. Is that in areas where there is high Indigenous population? How do you compare that?

Judge JOHNSTONE: That is an average across the State. For example, if you went up to Grafton where there is only a detention centre, kids in that detention centre would be something like 90 per cent. If you went out to the detention centre at Dubbo or the one at Riverina, again it is likely to be 80 or 90 per cent. But if you go out to Reiby, I think in due course you would probably find that the percentage there is more like 50 to 55 per cent.

Mr EDMOND ATALLA: Is that relative to the Indigenous population in that area?

Judge JOHNSTONE: Yes, I think it is certainly related. I believe there is a correlation. We have not yet got the data; we are trying, and we have been for a while. We believe there will be a direct correlation between children being put into detention by specialist children's magistrates and non-specialist magistrates. I

cannot give you any data about it; that is just an impression. What I can tell you is that at the moment, of the close to 300 children who are left in detention on any given day, 47 per cent of those children we know have been incarcerated for non-violent crimes. So that is our next target group—getting non-violent offenders out of gaol and into community programs. Sometimes that has been for offences as low on the severity scale as shoplifting. I do not think that this is a society where we should be gaoling children for shoplifting when we can rehabilitate them in a community program or address whatever the problem is at their family and community level.

Mr EDMOND ATALLA: Talking about the Indigenous juvenile issue, it has been indicated in one of the submissions that some of the diversionary programs are not culturally aligned. Do you believe it is a problem that can cause the high Indigenous statistic?

Judge JOHNSTONE: I do not think that Aboriginal youth crime is directly related to the inadequacy of the programs; I think it is more directly connected with their socio-economic circumstances. But that is not to say that we should not have more appropriately culturally aligned diversionary processes; I absolutely agree with that. Minister Hazzard did a summit a few years ago in relation to out-of-home care and one of the issues that arose out of it was the paucity of Aboriginal people engaged in casework and processes. One of the strong recommendations that came of the summit was, "Let us increase the number of people being trained as caseworkers."

Police have done a good job in the last five or six years in terms of incorporating young Aboriginal people into the Police Force through their Aboriginal Community Liaison Officer [ACLO] Program, which I am sure you are aware of. But there is a lot more room for Aboriginal people to come into the system. For example, there is only one Aboriginal judge in the whole of New South Wales, whereas if you went to New Zealand you will find a higher proportion of Maori and Pacific Islander judges and magistrates. But we do not even really have Aboriginal people coming through as law students, let alone making it to judicial positions. So, yes, we would certainly advocate the increased involvement of Aboriginal people in casework and diversionary programs.

Mr EDMOND ATALLA: Another issue that I read in the submissions is that the diversionary options under the Young Offenders Act vary according to geographical areas where some police resort to charging straightaway rather than going through a program. Can you comment on it?

Judge JOHNSTONE: I think I have already commented on what I call the unevenness of the application of the Young Offenders Act at various local area commands. It is a real problem. That reminds me, one of the inhibitors to using the Young Offenders Act is that the child at the police station has to admit guilt, has to admit the crime. That is a real inhibitor sometimes in enabling police to use the Young Offenders Act. In the paper, we have advocated adopting the New Zealand system to enable children to be diverted under the Young Offenders Act by using the process of "not deny" as opposed to admit the crime. I think that would help us increase the uptake and utilisation of the Young Offenders Act. But in answer to your specific question, we do have an unevenness of approach across different regional areas of New South Wales to the use of the Young Offenders Act.

Mr EDMOND ATALLA: Do you believe we should have a youth police officer in each command—

Judge JOHNSTONE: That would be a start. A full-time one.

Mr EDMOND ATALLA: —and then get all police officers to go through some uniform training so that they are all delivering the same curriculum?

Judge JOHNSTONE: I perhaps should say that the new Police Commissioner is very keen on the Young Offenders Act and increasing its utilisation. He has appointed a new assistant commissioner, Mr Cassar, who has been responsible for developing a youth strategic plan for the police. He is doing a lot of work in this space. I am hopeful that educating youth liaison officers and others in the uniform approach will be improved over the next couple of years. They are certainly very responsive at the moment in terms of this particular issue, but the thing I am still annoyed about is that I have been asking the Police Commissioner for five years to let me go down and address the academy at Goulburn for the cadets on a module for children's law and I have been blocked at every turn. That is one thing I still have on my to-do list.

Mr EDMOND ATALLA: I understand the Youth on Track program is voluntary and many are reluctant to participate. Do you believe that should be a mandatory program?

Judge JOHNSTONE: It is like anything: you make it mandatory, it does not necessarily make it effective. I think that is possibly something I do not want to answer. I just do not know the answer to that. There is a school of thought that says unless you are change ready, being put into any program is ineffective. It is like

drug programs. There is another school of thought that says to put people into a program and quite often you will get results. I guess at the moment it is not an issue because the Youth on Track program is so overworked anyway. They have got enough people coming into the program as it is. What I want to see is things like the Youth on Track program, possibly through the PCYC program, expanded into more regions. At the moment it is limited to six or seven local area commands in New South Wales.

Ms STEPH COOKE: The Committee has heard that a high turnover of police, magistrates, solicitors and community workers in regional areas can affect the success of diversionary efforts and outcomes for young people more generally. What strategies can be used to attract and retain quality staff in regional areas, and what is done to induct new magistrates so that they are aware of diversionary options and relevant local organisations and community leaders?

Judge JOHNSTONE: There are a number of strands to that question. In terms of the training, if we are dealing with 67 per cent of cases at the moment in youth crime, that other 33 per cent is done by Local Court magistrates, most often in rural locations. Every new magistrate now has to do a three-month induction in the Children's Court. We use that time to try to inculcate into them some of the specialist philosophies, training and experience that the full-time children's magistrates get. For example, at the moment the magistrate at Tamworth is trained in the Children's Court and so has some experience of Children's Court processes and procedures and special rules. But they very quickly forget them because they have got a busy list every day and they try to find a free hour on a Friday afternoon to do the Children's Court work. My experience is that they often forget to close the court, for example. They forget that we have the specialist process. Obviously in Broken Hill the magistrate has been letting the police into his court with their guns on for years.

The only way to really solve that problem is to expand what I call the whole of the Children's Court. It is not just the magistrates; it is the lawyers that go with it, the caseworkers, the police. All of that needs to be, in my view, rolled out across the whole of the State. I have heard stories particularly in the care jurisdiction from places like Moree that the local lawyers who get Legal Aid but are not experienced children's lawyers, quite often do not even understand the legislation and cannot really help their clients because they are not familiar with the specialist nature of the requirements. That is part of this process that I would like to see of expanding the operation of the Children's Court out to all of those country regions so that the clients in those regions are getting the best possible help legally. As for the balance of your question, did I miss anything?

Ms STEPH COOKE: Just attracting and retaining quality staff in regional areas.

Judge JOHNSTONE: In all those country towns it is the same problem, not just with lawyers and police. It is health workers, psychologists and caseworkers. Every country town has problems keeping good people. Teachers are another example. That, if I might suggest, is your problem, not mine.

Ms STEPH COOKE: The Committee has also heard about the scarcity of diversionary programs in regional New South Wales. Do you agree that this is a problem and, if so, do you have any suggestions about how we address that?

Judge JOHNSTONE: There is no doubt that there is a higher level of service available in metropolitan New South Wales for children's needs, so you have got a more concentrated effort in terms of Family and Community Services, Police and Juvenile Justice. They are all located mostly in the metropolitan area or the larger regional centres. It is the same problem as we have just been discussing: How do you get good people to go out and stay in these country towns? Other than that, what I would like to see happening in some of these smaller country towns is what I call a more collaborative agency cooperation.

If you went to Cowra, for example, there are something like 17 different government agencies and non-government organisations, including education and family and all the ones I have mentioned. They all operate in silos. If you put them all together and they had a coordinator I think you would get much better outcomes for young people because you would have one person coordinating all the services that are available in those country towns for that child and their family. There was a pilot at Tamworth or somewhere like that that worked for a number of years and then it was disbanded, but that was before my time. I would like to see, if the resources were to be available—and I suggest they are because, as I say, I do not know how many millions of dollars you are saving by closing three detention centres—that we spend that money on this sort of thing: some coordinators at a regional level.

Ms STEPH COOKE: You mentioned with respect to Bourke the justice reinvestment pilot. There was also one at Cowra for some time.

Judge JOHNSTONE: Cowra was a slightly different one. Cowra was more of a research project into how you would set it up. The Bourke one actually operates as a justice reinvestment, although there has not been any justice reinvestment yet. But it is an example of where they have a committee and local coordination. Cowra

was going to get some money to do the same thing and the plug was pulled recently. I have not yet found out why but I have got a feeling. I will not say why I think it happened just yet, not in this forum, but there is an issue in Cowra.

Mr DAMIEN TUDEHOPE: It is worth putting on the record that since you have been the President of the Children's Court of New South Wales the number of youths in custody has almost halved.

Judge JOHNSTONE: I would love to take the full credit—

Mr DAMIEN TUDEHOPE: I am offering it to you.

Judge JOHNSTONE: I will just say it is a contemporaneous phenomenon.

Mr DAMIEN TUDEHOPE: You said that a lot of offending and reoffending is often done by people in out-of-home care and part of the big equation is the complex family situations from which those young people come. How do you see the role of the Children's Court of New South Wales and the delivery of diversionary programs in the holistic approach to dealing with those families—looking at, for example, where these young people are living and what is happening at home, whether it be an out-of-home arrangement or a natural home arrangement?

Judge JOHNSTONE: That is the essence of diversion and the early intervention aspect of diversion, where organisations like Youth on Track, Family Investment Model, PCYC organisations and other local and non-government organisations get in and work with families early. Family and Community Services are starting to do more of that sort of work as well—working with disadvantaged families and families where there are problems. Absolutely it is the model that we use in the Youth Koori Court. It is called a multi-agency approach. It looks at and reacts to the causes of the child committing crime rather than just reacting to the crime itself and imposing a penalty.

Part of the process in the Youth Koori Court is to defer sentence while we get a multi-agency examination of what is happening with that child and that child's family. Ten times out of ten the reason why the child is committing crimes is because of the families socioeconomic circumstances or the fact that more often than not what happens is that you have got a child being brought up by a single mother. You have got domestic violence situations which are driving crime, you have got children with undiagnosed mental health problems, and you have got kids not going to school. Absolutely we would like to see money being put into early programs where we work with families before the children get into serious trouble or before the children are removed from their families.

Mr DAMIEN TUDEHOPE: Part of the problem with reoffending is that a young person who has been in a juvenile justice centre, even if they have the best will in the world not to reoffend, returns to exactly the same sort of environment. Are you satisfied that there are enough follow-up services when they leave?

Judge JOHNSTONE: Absolutely not. We would like to see so much more work done post incarceration and also in the care jurisdiction post out-of-home care. Children in out-of-home care at the age of 18 are out of that family and back to their own resources. We would like to see follow-up programs for all of those types of situations. It is a common problem where a child will go into a place like Acmena Juvenile Justice Centre at Grafton, stay in detention for three or four months, get off the drugs and be doing really well, then they go back to their community and get sucked back into peer and family influences and reoffend again within a matter of months.

Mr DAMIEN TUDEHOPE: How do you break that cycle?

Judge JOHNSTONE: I guess it is what we would call "post". It is diversion at a later time in the process. It is follow-up after incarceration. Not very much occurs in that space at all.

Mr DAMIEN TUDEHOPE: With adult offenders there is a parole arrangement—

Judge JOHNSTONE: We do have parole arrangements, we have Juvenile Justice supervision of children during their parole period but, again, in some of those country regions there just is not the reach or the capacity to assist those families. Part of the whole problem is having the resources and the money to provide services to do all these things that we would like to do. I guess that is what this inquiry is all about: Where are you going to put your resources to be most effective?

Mr DAMIEN TUDEHOPE: One of the resources you have advocated is having someone from the Education department being at court. Youth on Track uses the resources of schools. Teachers are able to make referrals to Youth on Track when a child is at risk. What sort of role would the education people involved in your court play?

Judge JOHNSTONE: Apart from addressing the non-attendance of children who come before us, there are a lot of things that we could do. My executive officer could answer this question a lot better than me. So can I take this on notice?

Mr DAMIEN TUDEHOPE: Certainly.

Judge JOHNSTONE: I know she has some views about that.

Mr DAMIEN TUDEHOPE: I also have some views about that. Assessing the literacy levels of these young people and why they are not going to school are something the court should have before it.

Judge JOHNSTONE: When you go out to Reiby you will see—

The CHAIR: The Committee has been there once.

Judge JOHNSTONE: Every child who goes into Reiby gets an assessment. They get a literary test and they get a numeracy test. The vast majority of them—80 per cent to 90 per cent—have numeric or literacy deficiencies. They will all get a health check by Justice Health and 90 per cent of them have bad teeth—if they stay there long enough 90 per cent of them will get their teeth fixed. The large majority of them will be diagnosed and it will be discovered that they have got some sort of a mental health issue that has never been addressed or undiagnosed. I keep asking the question: Why do we have to send kids into gaol to get their teeth fixed, to find out that they are not being properly educated or to have their mental health issues diagnosed? All that should be happening in the community in advance.

Mr DAMIEN TUDEHOPE: When the Committee visited, we were told about the cessation of TAFE programs at Reiby.

Judge JOHNSTONE: I do not know the detail of that. One of the things that Reiby had was a vocational training wing.

The CHAIR: It still has.

Judge JOHNSTONE: It is important in detention centres for children once they get to a certain age, leaving aside the education issue, they are better off being trained in an apprenticeship or a vocational setting where they can leave that detention centre and go into a job. I think they do quite a lot of that sort of work at Reiby.

Mr DAMIEN TUDEHOPE: We used to have a young person's drug and alcohol court.

Judge JOHNSTONE: Yes.

Mr DAMIEN TUDEHOPE: Do you have a view on that?

Judge JOHNSTONE: Yes. We were very disappointed when the funding was withdrawn for our Youth Drug and Alcohol Court [YDAC]. On the other hand, I am not advocating for that to be reinstated. What I am asking for is sufficient residential drug and alcohol facilities for young people to be provided within the western suburbs that we can utilise and divert children to. One thing I do say is that I find it quite ironic that so much money is being put into the adult Drug Court and none into the Children's Court, when I would have thought you would get a lot more bang for your buck by putting a drug court in the Children's Court.

I think we are sufficiently well equipped to deal with those sorts of issues through our processes anyway, but what we do want is somewhere to be able to send them. As part of this inquiry no doubt the Committee is looking at how many drug and alcohol rehabilitation centres there are in New South Wales for children. As far as I am aware there is Father Chris Riley's Youth Off The Streets. In New South Wales there are about eight beds in the eastern suburbs, there is one on the Southern Highlands and that is all. Other than that, there is Mac River at Dubbo which has eight beds for kids.

The CHAIR: The Committee did a tour of Mac River.

Judge JOHNSTONE: How ironic that it is way out in the west; nothing in Western Sydney. The other one is Junaa Buwa! Centre for Youth Wellbeing at Coffs Harbour which has got about eight beds. That is worth a visit as well if the Committee is up that way. But in the western suburbs of Sydney, after the closure of the YDAC there is nothing. I have been trying to get one of the agencies like Marists or CatholicCare or one of those agencies to start a residential drug and alcohol program at somewhere like Blacktown or Mount Druitt, but so far I have not been able to.

The CHAIR: The Committee has received evidence calling for the reform of bail laws for young people. Do you have any comments on that?

Judge JOHNSTONE: Only my personal view, which I will probably get into trouble for. I do not have a problem with the bail laws as they currently stand. I think they are working reasonably well in the Children's Court. The latest statistics suggest that only 54 per cent of kids are on remand in New South Wales. As I have said, the police have become much more responsible in the last four or five years in terms of putting kids into gaol overnight. We still see quite a lot of it but it is not nearly as bad as it used to be. The number of children in gaol has reduced as a result of police being much more sophisticated in their policing of young people. A lot fewer people are being gaoled for breach of curfew and minor crimes like that.

We now have section 28, which is working quite well. There are things in relation to section 28 that perhaps we would like to see work better. That, if I may, is another matter that we can address. Maybe sometimes we get a bit concerned when we get children under the age of 18 who we have to release on bail and there is nowhere for them to go. There might be a 14-year-old girl who is living with a 31-year-old drug addicted pimp, or there might be a 17-year-old boy who has nowhere to go and his family do not want him back and he is self-harming—and we have nowhere to go. Some of those issues are of concern to us. The law as it currently stands does not allow us to do anything except grant them bail, and they are on their own out in the community.

There is a system in Victoria—the short-term welfare power—where the court can put a child who is self-harming into protective custody for up to 21 days before they then go to the Supreme Court for perhaps being addressed more carefully as to whether they might be put into Sherwood House. But again it is an issue because it is a deprivation of freedom which the civil libertarians would argue needs to be done more sensitively than just locking them up.

The CHAIR: When the Committee visited those institutions there were discussions about the fact that on release there seemed to be a void and a disconnect between the government agencies. When we set up Safer Pathway for domestic violence there was a requirement that all agencies, non-government organisations and so on, meet and work out a pathway for victims. There does not seem to be anything like that in the juvenile justice area.

Judge JOHNSTONE: No, except in the Youth Koori Court.

The CHAIR: Except in the Youth Koori Court. Thank you for your candid answers and your information. On behalf of the Committee I thank you for your presentation and your attendance today. The Committee may wish to ask you additional questions in writing. The replies to those questions will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions within five business days?

Judge JOHNSTONE: More than happy to delegate that to my executive officer.

The CHAIR: I think you have already given a few tasks to your executive officer today. Once again, thank you on behalf of the Committee.

Judge JOHNSTONE: Thank you for the opportunity.

(The witness withdrew)

DEBRA MAHER, Solicitor in Charge, Children's Legal Service (Criminal Division), Legal Aid NSW, affirmed and examined

The CHAIR: Welcome and thank you for appearing before the Committee today. Before we proceed, do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Ms MAHER: No, I do not.

The CHAIR: Would you like to make a brief opening statement before the commencement of questions?

Ms MAHER: Yes, that would be terrific. I will tell you a little bit about myself. I have been a solicitor since February 1995, so about 23 years. I worked on the Royal Commission into the New South Wales Police Service then I was a Director of Public Prosecutions [DPP] solicitor for some years, working as a prosecuting solicitor in offices of the DPP at Campbelltown, Parramatta and the city. Since 2003 I have been a solicitor with Legal Aid NSW, and for the last eight or nine years I have been the Solicitor in Charge of the Children's Legal Service. My background is predominantly in criminal law, and for the last however many years in the Children's Court.

What I wanted to talk about today in some brief areas—and of course it all relates to the submission—is the change of focus that I have seen in my over 20 years of practice in criminal law, and that is a change of focus from a rehabilitative approach to a risk-based approach. That is true especially of children, where we now take a more risk-based approach, in line with what they do in the adult jurisdiction, rather than what was previously predominantly a rehabilitative focus. That shows up in many areas of law reform and in how we now approach children's criminal law.

I want to talk about the Young Offenders Act and why we think it is not used as much for Aboriginal young people as it should be. In some respects we do not think it has been able to achieve its full promise and potential as a diversionary Act. Coming into that is how it is used by police and by the courts especially in regional areas, and some of the hiccups that have emerged since the Act was implemented in about 1998-99. I also want to talk about the suspect target management plan [STMP] that the police run and its impact on youth diversion.

The other broader area I would like to talk about relates to the unintended consequences that often occur in the practice of children's criminal law where there has been some law reform, often very well founded in the adult jurisdiction but the consequence it has in the children's jurisdiction is different to what was originally intended. Prime amongst those are reforms in areas like domestic violence, sentencing reforms and Bail Act reforms. Often the intention of the legislation and how it should work with adults has been well motivated but how it is played out with children has been quite different. That is a general theme that we wanted to address as well. I am also happy to answer any questions that you have.

The CHAIR: Mission Australia told the Committee that there are opportunities to improve the youth justice conference process, citing limited referral options for the program and limited opportunities for young people to address their criminogenic needs. Do you have any comments?

Ms MAHER: Youth justice conferencing is an effective way to deal with young people. The Act was set up specifically so that referrals could come from a number of different points. I do not know whether you might have noticed—most people who practice now do not notice—but originally when the Young Offenders Act was drafted, and the drafting is the same now, there were to be three points of referral not the two that we currently have. The intended referral points were the police in the first instance, the Director of Public Prosecutions [DPP] in the second instance, and the courts in the third instance. Because I am so old I know that when the Young Offenders Act was originally drafted it was envisaged after the police royal commission that the DPP would replace police prosecutors in prosecuting in the Local Court and the Children's Court.

When the Young Offenders Act was drafted there were all these references to the DPP that make no sense now but at the time it was envisaged that the police would decide whether to refer, then it would go to the DPP because it was going to be the prosecuting body. Before the matter was listed in court the DPP would be a second screening and it would be able to refer for conference and the third point would be the police. Now that never happened so that has taken out one referral point.

The research on youth justice conferencing has been incredibly interesting. It is probably one of those very rare programs where both victims and offenders express their satisfaction with the process. It is unusual unfortunately—I know this from my time as a DPP solicitor—to have processes where both victims and

offenders are happy with the process and indeed the outcome. Yet in its couple of evaluations that is exactly what has happened with youth justice conferences. Victims are happy with them as well. They feel heard and they feel that they have a voice.

As has happened over the years, and as referrals lessened, it brought on a chicken and egg type situation. As referrals dropped Juvenile Justice took resources out of them and then when referrals happened from the police or the court, they said, "They are not coming back fast enough and we are not happy with the outcome plan." Anecdotally that led to less referrals and when you have less referrals you take out more resources. The situation that we ended up with is a situation that I think is due to under-resourcing. Sometimes the courts or the police are not happy with the plans that are coming back because the resources that were there initially are not there any more.

There is also a thought—and it is wrong in my view—that somehow or other a referral to a youth justice conference is an easy option; that because it is in our ladder of sentencing below something like a formal good behaviour bond or a formal probation order, somehow it is an easy way out for a child, which could not be further from the truth. As a lawyer you might be trying to convince a child that a referral to a conference might be good for them. But if you think about it, a 14-year-old or 15-year-old child has the choice of going into court and getting a good behaviour for six months where they do not have to do anything and they do not have to come back and, if they are good, as far as they are concerned they walk out the door and it is all over. If we say to them, "It would be better if we asked for a referral to a youth justice conference" we would have to explain to them that that means they have to go to a meeting, sit with the victim, often sit with the police and members of the community, agree to do something, have a plan and go back and do it. It is a much more involved process and one that we try to encourage. I explained that to show that often the easy option is not an easy option.

The answer to your question is that we need those resources there but where we have ended up is not where we have started. I really felt that even 10 years ago the process was one that everybody was happier with but we have reached a situation where people are not as happy with it any more. But I still truly believe that it is a most effective process for a child to be involved in. Sitting with that person from Kmart, if it is a case of shoplifting, or sitting with the person whose car you kicked, or whatever, really affects that bit of the brain of a child that says, "Here I am and here they are, and we have to talk about it." I do not know whether any of you have teenage children but their greatest strength is not insight or talking about it, so to encourage that is a fabulous thing.

The CHAIR: In your submission you refer to Youth on Track and state, "A scheme that relies on referrals from police officers may struggle to engage Aboriginal young people." Do you have any further comments on that?

Ms MAHER: Yes. I think that is a valid assertion that we made in our submission. I think it is based on the reality of some of the relationships between the community and the police in some areas. There are some local area commands where police work magnificently in their efforts to engage the local community, and they do amazingly well. I look at Redfern and think of how it was 15 years ago and then I think of the amazing work that has been done in the past few years which has been largely police driven. The suspect target management plan is a deliberate program run by police. They might say, "This is a bad person and we are going to make sure that they know we are watching them." So they are pulled over, searched, visited and cars are parked outside their houses. The fact that that happens to children—and there has been a recent report where a child as young as 11 is on a suspect target management plan—does not engender good relations with the local community and with the children in that community. Part of our view is that if police want to truly engage with communities something like putting an 11 year old on a suspect target management plan should not be allowed. In fact, I do not believe, and we do not believe, that any child should be on one of those plans.

Mr DAMIEN TUDEHOPE: What is the alternative?

Ms MAHER: There has to be an alternative for an 11 year old, does there not—even if I cannot come up with it now. There has to be an alternative for an 11 year old because we get situations where 10 year olds and 11 year olds are arrested. If a 10 year old is arrested, I am happy to sit here and say, "It's not their fault."

Mr DAMIEN TUDEHOPE: If there is a spate of car stealing and there is a particular young person who is a known offender, why would it not be prudent to have some sort of suspect targeting in relation to that offender?

Ms MAHER: Because initially, to be on a suspect target management plan, you do not have to have done anything wrong. These are young people who perhaps have not even been charged with an offence, so the notion of innocent before being proven guilty needs to come into play here.

Mr DAMIEN TUDEHOPE: Is that true though? Is that true what you just said?

Ms MAHER: Absolutely true.

Mr DAMIEN TUDEHOPE: That there are people on suspect target plans who have never committed an offence?

Ms MAHER: Who have never been charged with an offence—absolutely. It is outlined quite clearly in the report that was done by I cannot remember who, but only in the last couple of months. Maybe two months ago they released a report on it.

Mr DAMIEN TUDEHOPE: I would be pleased if you could send us some information in relation to that.

Ms MAHER: I think we did deal with it in our submission and there is a quote there—sorry.

Ms JENNY LEONG: I am pretty sure it is included as part of the Public Interest Advocacy Centre [PIAC] submission. We are hearing from it later today.

Mr EDMOND ATALLA: Yes.

Ms MAHER: Yes, it is. It is the PIAC, sorry.

Ms JENNY LEONG: It is on our record and we have received the submission.

The CHAIR: And Dr Sentas too.

Ms MAHER: There is no requirement that you have been charged or even know that you are on the target list.

Mr DAMIEN TUDEHOPE: I would like to have more background on that.

Ms JENNY LEONG: Just to clarify this for the member for Epping, there is, and later today we will have the opportunity to speak to the author of that report.

The CHAIR: Yes. We will do that.

Mr DAMIEN TUDEHOPE: I will be very interested to know the background to making that assertion.

The CHAIR: Right. I think we will continue with questioning by the member for Epping.

Mr DAMIEN TUDEHOPE: In relation to your involvement, when is it that Legal Aid first gets instructions to act for these young offenders?

Ms MAHER: There are a couple of different routes. The earliest one that is connected with the Young Offenders Act is when a young person in police custody or with the police will phone the Legal Aid youth hotline where the police may have an option under the Young Offenders Act for that young person, or there may be no option. They have arrested the young person, the police will call us on the youth hotline, which is staffed by Legal Aid lawyers, and the police will say to us, "We have a young person here and we are considering Young Offenders Act options." They are looking at a caution or a conference. We give advice based on how that should proceed; or they might ring us and say, "We have a young person here with a very serious offence. We are not looking at Young Offenders Act options. This young person will be charged and go to court", and we will give advice about right to silence and that kind of thing. That is our first contact. Then we get contact when they come to court and they are charged.

Mr DAMIEN TUDEHOPE: My experience is that often Legal Aid are very overworked in this jurisdiction and they can turn up to the Children's Court and they will be briefed on the day.

Ms MAHER: Absolutely. We are briefed on the day and we are briefed in duty work. On that first appearance we take our instructions on that day. The Children's Legal Service, the children's criminal jurisdiction in Legal Aid, is quite different from the adult jurisdiction. We do not impose on children a means test or a merit test. It is quite different to when you go to the Local Court and you have to establish whether you can act for a person. We basically act for anyone who walks through the door. We normally, especially in the big dedicated Children's Court, work next to the Aboriginal Legal Service [ALS]. Between the ALS and the Children's Legal Service, we would represent probably about 95 per cent of the children in that list. Where a matter is more serious you are going to get briefs and that kind of thing, the matters go over and you have a lot more time. But we do a lot of duty work where we represent a child coming in and especially for something like the Young Offenders Act diversion that will happen on that day.

Mr DAMIEN TUDEHOPE: Is one of the options you are talking to an offender about youth justice conferencing?

Ms MAHER: Absolutely. I did some work last year because our Chief Executive Officer Brendan Thomas was going to a meeting with the Police Commissioner. One of the things that unfortunately we often hear from the police is, "We do not use the Young Offenders Act because the Legal Aid lawyers or the ALS lawyers tell the children not to make an admission. Therefore, we cannot refer them because they do not make an admission."

Mr DAMIEN TUDEHOPE: Do you agree with what you heard previously from the President of the Children's Court about having a separate legal referral without necessarily pleading guilty. You can be referred by way of—

The CHAIR: Denial.

Ms MAHER: Yes, but if I can just go back to that and say to you that I pulled out all the records—I think it was for August or September—last year. We keep very good records when we have those phone calls. I think there were about 400 calls from the police that month with children in custody and in half of them they said, "There are no Young Offenders Act options", and in about 200 of them they said, "We are looking at the Young Offenders Act." In over 90 per cent of those calls, our advice to the child was to make an admission and receive a caution or a referral to a conference. The notion that we are not players in that and that we do not encourage diversion is wrong. We were able to show very clearly that in over 90 per cent of the cases where the police say that they are looking at a diversion, we have given advice that an admission is suitable.

Having said that, there are problems with how those admissions are made. I agree completely with His Honour that there needs to be an easier way to make an admission because the Young Offenders Act was drafted just to require an admission. If you go to court, that admission takes the form of, "Your Honour, I am here with my client. He admits to this possess prohibited drug offence." The judge will say, "Thank you, Ms Maher. We will proceed." At the police station, the police in the majority of cases require a fully recorded admission, which is called an electronically recorded interview of a suspect person [ERISP]. That is really an investigative tool. It is more than an admission and it is more than the Act requires. The Act does not require that there be a fully recorded interview. You can imagine the difficulties that that can bring.

"Possess prohibited drug" is a really good example. The young person wants to say, "Yes, I admit that that drug in my pocket is mine", but if they go into an ERISP when the police want to use it as an investigative tool, they can be asked questions like, "Where did you get it? Who gave it to you? What were you going to do with it?" The silly kid says, "It wasn't all for me; it was for my friends too"—and that is a "supply prohibited drug". You can see that there are dangers and that children need protection from their own self a lot of the time. A more streamlined way, or even just the police accepting that they do not have to get an ERISP every time they want an admission, would certainly increase the use of the Act at that first point with the police.

Mr DAMIEN TUDEHOPE: When they do attend the youth conferencing, are they represented?

Ms MAHER: No, and that was a deliberate situation.

Mr DAMIEN TUDEHOPE: I agree with that.

Ms MAHER: I think one of the things that makes conferencing work is the fact that there is no defence representative there for the child. The child is there. They can have a support person; or a parent can go, if they have one. But the police also do not run the conference either, so that takes it away—

Mr DAMIEN TUDEHOPE: But they attend, though, do they not?

Ms MAHER: They can attend if they want to, and often they do, but not always. But it is community run. Juvenile Justice has pretty much, I think, always done a fabulous job of making it clear that it is there to—mediate is the wrong word—it is there as the community representatives to work out what is the best way forward, so that the child can take responsibility and move on. The fact that it is not run by police is a big part of its success and a big part of how it is run, as is the fact that the child is not represented. They have made the admission and so they are there to buy into what the community thinks is the proper outcome.

Mr DAMIEN TUDEHOPE: You appear to be a little critical of outcome plans in some circumstances.

Ms MAHER: Oh, no, I did not mean that. I apologise if it sounded that way. What I meant was that because some of the resources have been removed, for what was sometimes good reasons, we have kind of got into a situation where, because the timeliness is not as good, people are not buying into it is much as they were 10 years ago. That is what I am trying to say. We need to try to resource it up again so that you get that confidence back in it.

Ms STEPH COOKE: The Committee has heard that the adolescent court and community team run by Justice Health is not available in every Local Court that sits as a Children's Court. Is there a need to roll this out throughout the State?

Ms MAHER: It is a fabulous program, but there have even been a few staffing issues within the dedicated Children's Courts in Sydney. We have people at Parramatta and Surry Hills, but often they are not there every day. I know that Legal Aid staff and, from what I have heard, Aboriginal Legal Service [ALS] staff have found that resource to be incredibly useful as a means of getting information about a child who might present with some mental illness or other developmental issues. It would be terrific for that to be available everywhere. How practical that is I do not know. I would be very happy if we started to get them all the time in the big number courts to start with; but it is a terrific program and well utilised where it exists.

Ms STEPH COOKE: You have called for the expansion of the Youth Koori Court in other areas, particularly in regional New South Wales.

Ms MAHER: Yes.

Ms STEPH COOKE: What led you to make this recommendation?

Ms MAHER: I think looking at the outcomes. It is very difficult in any court system where what you see is a five-minute or 20-minute snapshot of a young person's life. It is a lot to understand, it is a lot of information to gather, and you are reliant on reports and that kind of thing, which sometimes come in and sometimes do not, depending on the cooperation of the families and whatever. What something like the Youth Koori Court gives you is an opportunity for the court to be more informed about what the circumstances of the young person really are. That means that there is more integrity even in the decision-making and that there is more tailoring of the actual program that the young person can have put in place, because the ultimate aim is rehabilitation. It is not reoffending, which is the risk management part of it, but it is even more than that: it is getting them back on the right track.

In that short period of time when you are doing a 10-minute sentencing or a half-an-hour sentencing, without that ongoing information and that little bit more time you are not truly getting to the nub of it. That is a problem for all legal systems really: How much of the full information are you able to get before the court for everyone to take into account? What the Youth Koori Court does is broaden that incoming knowledge, tailoring it more specifically for a young person and taking into account their circumstances, because these young people are in quite a different situation than adult offenders. We all know when we look at adult offenders that if you do research in women's prisons and men's prisons you come up with stats that tell you that high percentages of them were abused as children, neglected, sexually abused, all sorts of things like that, but they are adults now and the harm that they are doing to other people has kind of overrun that and they are not considerations in the same way.

But the children that we are having before the court are very often still having that harm done to them, it is happening right now. So, yes, they are doing things wrong and they are now starting to harm people, whether it is something like stealing and so on. But they are still in that situation where harm is being done to them and it is important that we take into account what that harm is, whether it is living in a violent household, living with parents with drug addictions, or abuse and neglect or domestic violence, whether they have undiagnosed physical health problems, mental health problems. So the situation of those children is very different. I heard the President of the Children's Court say, "Why does a child have to come into custody to find out that they have got medical conditions and dental problems and mental health issues and education issues?" One of the things the Youth Koori Court does is let us find out all those things.

Mr EDMOND ATALLA: During our visit to the Juvenile Justice Community Office at Dubbo the Committee heard that diversionary programs should involve families, but we also heard that families could be the cause of the problem. Can you comment on that particular statement? Should it involve families if the families are known as the cause of the problems?

Ms MAHER: That is a really difficult area because you do have young people come before the court who do have a family who are trying hard, who are dealing with some adolescent issues or some issues outside of the family that have caused the breaking out of behaviour or the acting out or whatever. They are certainly not the majority but they do exist and obviously engaging those families would be a really positive thing, but they are not the majority. The other problem is that children often do not want to disclose what some of their family problems are because part of growing up in a family with things to hide is that you take it on board and you hide it; you do not let people know that dad beats mum up every week because there is a shame attached to that, and you do not let people know that someone in your family is a drug addict, and a lot of kids take on that responsibility.

A classic example that I had was a young man about 15 came in with a domestic violence offence where it was alleged that he was violent towards his mother. In the police facts it said that the mother was so afraid of this boy that when the police came to the house she was cowering in the bushes because she was so afraid of him. As I read that to my client he laughed, and I said, "That's not funny, mate. This is a really serious matter". He said, "Miss, mum wasn't cowering in the bushes. We had a fight because I came home and she was using drugs and she had promised me that she wouldn't do it anymore, and then when the police came she was out in the bushes and she was burying her stash so that when the police came they wouldn't see all the drug paraphernalia." But he did not want me to tell the court that. We act under direct instructions and that is our professional responsibility. That is just an example that I am giving you to show that things are not always as they seem and that sometimes children are very protective of their dysfunctional family. We sometimes make these very middle-class assumptions that family is the safest place and that family are the people that treat you best. Unfortunately, for a lot of our children that is not the case.

I think that kind of mandating parental participation would be very difficult because there are sometimes those things that you do not know and that children do not want you to know. But it is trying to find the right level of support to improve parenting skills but to also give the child the skills that they need to cope in a difficult family, because that is their reality. We must not think that you cannot help the child if you cannot help the family because you can still help the child even if you cannot necessarily help the family. These kids are starting to work out "How do I live my own life? How do I want to be?" We must not think that they have to have family to do that, even though, of course, in an ideal world that would be the best way to be.

Mr EDMOND ATALLA: Following on from that, I recall the Committee speaking to one of the offenders who said she did not want to go back to her family because that is the environment where her friends are, the environment where she got into trouble in the first place, and she wanted to go somewhere else away from that but that there were no provisions for that. When she was going to be released she was going to be put back in that environment and she said, "I'll probably end up back here because I am being put back in the same environment which caused me to be here in the first place."

Ms MAHER: I have often had this happen and I have had my staff come to me with what they see as an ethical dilemma of a client who says they do not want to get out of custody. That is the reality. Juvenile Justice do a really good job. I am not saying they are perfect, because no custody situation in a way can be, but we regularly have children who will say, "I want to stay in until the end of the year because if I stay in here I can finish my year 10, but I know if I go home I won't be able to finish it." The education that they provide in custody is terrific because I think they manage to tailor it in a way that they have not managed to do outside of custody. It is not just education, it is often safety, and you find that more with young women; they do not want to go back to what they see as at-risk situations in the family home with mum's boyfriend or those kinds of really difficult situations. It is unfortunate that we have young people who want to stay in custody. I think it probably happens more with young women than young men. I do not know what the answer to that is except to try and provide education and support in a way outside.

Ms JENNY LEONG: To follow on that line, I note in your submission you mention issues around home environment in relation to bail conditions and curfews. You also mention issues around homelessness. Of particular concern are situations we heard about when we visited a number of Juvenile Justice centres in which people are kept in custody because the Department of Family and Community Services are not required to provide them with accommodation and so there is no alternative option. Could you point to what you see as any legislative or policy changes that could be made within the criminal justice system to require a housing first approach or recognition of the idea of housing in relation to these matters to keep young people out of that situation?

Ms MAHER: If I can take the first part of that which is to talk about children in out-of-home care, children in out-of-home care are the responsibility of the State. The State is their parent. With all this stuff we are talking about—about how parents are supposed to do the right thing—for those children, we are their parents, and yet those children are amongst the most criminalised group. As I have often said, if the police got called to my house every time my two brothers belted each other, there would have been a constant stream of police cars at 31 Queen Street. They are in their fifties now and quite well behaved and tame. The police were never called.

The point is that with the way many out-of-home care places run, if one child hits another child, if the kid puts their fist through the wall—and remember that they only end up there if they are at the extreme end of trauma and neglect. No matter what anyone says, children are not removed from their families unless there are really serious issues. These kids are the most damaged kids, so any acting out is surely to be predicted, not to be surprised by, and yet we bring into play all of the domestic violence legislation that we brought in, quite properly, to protect women in situations that we all know about, and yet it is used completely differently.

It is worth noting that in Queensland—and do you not hate it when they do things better than us—they do not allow their domestic violence legislation to be used in out-of-home care or between families, parents and children. In out-of-home care we have represented children who have pages and pages of criminal history based solely on their behaviour within out-of-home care. They have never gone outside and stolen anything, they have never broken in, they have never done a robbery. What they have done is malicious damage, common assault, breach AVO, because then you get an AVO between the carer and the child and the child goes back and says, "I am going to kill your cat," and then you get a breach. It goes on and on.

You often have these big long criminal histories and criminalisation of children who have done nothing except not cope in their home environment with their "parents". Over the last couple of years there have been some positive changes but, for instance, in the past no-one actually went to those out-of-home carers and said to them, as some kind of measurement of their success, "How many times did you call the police?" Because often they would call the police for behaviour management of a child. No-one says to them, "How many nights have children in your care spent in juvenile detention?" Because if you have a child spend 100 nights in juvenile detention then there is something wrong with how you are doing your job. The role of those organisations and those NGOs as parents has often left a lot to be desired. FACS are taking steps and they are looking at it, but it is an area that we could do a lot better at.

The way we respond to families is often difficult in the same way. Sometimes when a parent calls the police for an acting-out child it is often a plea for help and they want referrals for counselling and that kind of thing—they do not really want the involvement of the criminal justice system—and yet, again, that same legislation that we have tightened up and tried to make it so women have to go to court and they cannot withdraw the charges, means the parent comes to court and says, "Whoa. This is not really what I wanted." They are now governed by the policy decisions that say you can not withdraw the AVO because it is domestic violence. Like I said, in Queensland the domestic violence legislation is not used that way. That has been an unintended consequence on children for what we have properly and rightly done in another area.

The Bail Act is another way that we have seen that. Bail was tightened up for adults but it had a bad effect on children and then we eased it up a bit and exempted children from some of the provisions like "show cause" and stuff. Sometimes we do stuff for a really good reason in the adult jurisdiction but the way it plays out for kids is not how we meant it to. We need to pay some special attention to out-of-home care because they make up a lot of those remand numbers and they are truly in custody because there is nowhere else to go. And we are the parent.

Ms JENNY LEONG: The other part of that is that people are being detained because there is not suitable accommodation available.

Ms MAHER: That is really difficult. There is a provision that says that a child should not be kept in criminal detention because they do not have anywhere to go. As an advocate we will be before the court and say, "Your honour, this 17-year-old girl may not have anywhere to live but you cannot bail refuse her because of that, because this is a shoplifting charge." What we often to do is try to get the matters finalised and then you do not have to worry about bail because you are not going to get a custodial sentence. As a mother and grandmother and human being, you do understand the concerns that the court has. Another very common thing in the Children's Court is the overlaying of welfare issues with criminal law issues. We go in there as criminal lawyers representing our client in the criminal jurisdiction and we say, "This is the proper outcome in the criminal jurisdiction." People try to bring in welfare issues because they are human, but their place is not in the criminal court, and it is not the place of a juvenile detention centre to house young people who are homeless.

Ms JENNY LEONG: Do you have any suggestions as to how that would be addressed?

Ms MAHER: Often children who are older, the 16- and 17-year-olds, will stay with friends or have other people to be with. Sometimes with the bar that we put in place—this is probably true with Aboriginal kids and in some Aboriginal communities—it is harder for the court to properly understand the kinship ties and the fact that there are people they can go and live with who they call "auntie" but may not be a blood relative but it is part of the way the community is structured. The court sometimes finds it difficult to respond to that. It is harder for a younger child because they do not have the self-determination of organising their own accommodation. Juvenile Justice are very good at trying to make connections and at finding extended family members—aunties, uncles and grandparents. That is the section 28 that his honour Judge Johnstone was talking about.

That change came in with the new Bail Act legislation. Prior to that it used to be a condition called "reside as directed by Juvenile Justice". When a child came and they had nowhere to go, what the court would do was grant bail and one of the conditions would be would be to reside as directed by Juvenile Justice. What that meant was: take the child away, find somewhere for them to live and, as long as Juvenile Justice are happy

with it, the court will be happy with it. Then it turned out that that was not technical enough and there were some legal issues around it.

That is how we ended up with section 28 in the new Bail Act, which said that we will stand it over for two days and in the meantime Juvenile Justice can find somewhere. That does not work as smoothly as the old condition. I am not sure why. It should. It works better in the dedicated children's courts. It does not work as well in the regional areas. His Honour Judge Johnstone alluded to some of the issues you have where a magistrate is sitting as a Local Court magistrate all day and a for a little tiny part of the day in comes a specialist children's thing and it is just not where their mindset is. It is a bit like: "I have been sentencing adults all day and I have just sentenced the last adult to nine months for a break and enter and now I have a young person with a break and enter with nowhere to live." And instead of putting my Children's Court hat on, which would say: "We could look at a caution or a conference for this," they are still thinking, "I just gave someone a gaol sentence for that." It is really hard to break out of that mode you have been in for the whole rest of the week.

Ms JENNY LEONG: Do you want to talk any further on the Custody Notification Service and the concerns that you flagged in your submission that the Aboriginal Legal Service has about the service no longer being available in situations where young persons are not in police custody?

Ms MAHER: Yes. It is actually a positive thing that the police will bring young people in—they are not technically under arrest—and they want to explore Young Offenders Act outcomes. We take those calls, whether they are in custody, not in custody or the police have visited the house. The custody notification line operates differently. It is a custody notification line; it only gives advice to Aboriginal people who are in custody. That means that there have been calls to the custody notification line that they do not take, so they are coming to us.

Yes, it is an extra workload but we are happy to take it on. I think the effect of that is that the things that happen on a custody notification line very much affect the diversion of young Aboriginal people. I completely understand and accept their position: "We have limited funding, Aboriginal people in custody are our priority and we cannot stretch to young people who are not in custody." But if we are to keep the diversion happening we need access for young Aboriginal people who are not in custody to get advice, because we want to encourage as much of that diversion as possible.

The CHAIR: Thank you. I am sure I speak on behalf of the rest of the Committee when I thank you for your informative responses to our questions. The Committee may wish to send you some additional questions in writing. The replies to those questions will form part of your evidence and will be made public. Will you be happy to provide a written reply within five business days to any further questions?

Ms MAHER: Yes, very much so.

The CHAIR: Thank you for your enthusiasm.

(The witness withdrew)

(Luncheon adjournment)

EVELYNE TADROS, State Leader, Metro NSW, Mission Australia, sworn and examined

The CHAIR: Welcome to the inquiry, Dr Tadros, and thank you for appearing before the Committee today. Before we proceed, do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Dr TADROS: No, thank you. I will also use this as an opportunity to disclose that I am a conference convenor for the Department of Juvenile Justice coming up to 20 years.

The CHAIR: Would you like to make a brief opening statement before the commencement of questions?

Dr TADROS: That would be great, thank you. Mission Australia is a national, non-denominational Christian organisation that delivers evidence-based client-centred community services with a focus on reducing homelessness and strengthening communities. Mission Australia provides a number of successful programs that provide vital supports to young people in contact with the juvenile justice system in New South Wales such as Youth on Track, the Juvenile Justice Joint Support Program and Juvenile Justice-focused drug and alcohol rehabilitation services, some of which I understand you have been to visit, including the The Mac River Centre, Junaa Buwa! Centre and Triple Care Farm.

We also provide a range of services across New South Wales that address intersecting issues such as housing, homelessness, domestic and family violence, substance misuse and mental health issues. However, the existing services are struggling to meet the demand within the community and the short-term funding models make it harder for the services to build meaningful and sustainable relationships within communities to address the issues at hand. One of the biggest challenges we are witnessing is young people becoming homeless due to their brushes with the justice system.

There must be clear government policies and cooperation across departments to prevent young people becoming homeless after leaving juvenile detention. In addition, not having appropriate accommodation or stable housing should not mean that courts refrain from ordering community correction orders such as good behaviour bonds, community service orders or in fact being in remand. There are numerous youth diversionary programs that are effective and successful that can help young people through the journey to get their life on track with focus on early intervention, post-release supports and outreach and education.

However, these programs are not available across the State and should be replicated to provide greater access where we know they exist and the evaluations indicate they are successful. Case management and support services should also have the capacity to engage the young person's family and community to effect sustainable changes and promote wellbeing where that is safe for the young person and appropriate. Detention should always be viewed as a last resort. Provision of the right supports at the earliest point in time will produce social, economic and cultural benefits to the community.

The CHAIR: Thank you, Dr Tadros. I will start with a few questions. You told the Committee that the youth justice conference process could be improved, citing limited referral options for programs and limited opportunities for young people to address their criminogenic needs. Could you expand on those comments?

Dr TADROS: When a conference is adjourned or a conference takes place and you set up an outcome plan, as part of the outcome plan you need to come up with something that shows the young person is remorseful for their actions but starts to address those criminogenic needs. In some areas it is really great to be able to do that because the services to be able to refer to exist but in a lot of areas those services are quite limited and they might be specific. You might be able to refer a young person to headspace to deal with mental health issues. You might be able to refer a young person to family intervention where that is needed. But if they have anger management issues, for instance, there are limited services that you might be able to refer to, for example, the Detag program when a young person has committed a graffiti offence and the recommendation is that they be referred to the Detag program. That Detag program does not exist in every area so sometimes getting them over the border to another area where it does exist is not feasible; there are transport issues for the young people and sometimes the Police Citizens Youth Club [PCYC] that runs them will not take on someone outside the area because they have their own workloads to work through.

Outcome plan options can be challenging if there is nowhere to refer. Mission Australia has a program called the Youth Crime Prevention Program which was set up to deal with those types of issues so that they can refer clients to this program. You set up your goals, you work out what the criminogenic issues are and you start to navigate them. That program I am told is due to close in June because funding is not sustainable. It was privately funded and the donor has pulled that funding. It is similar to the Youth on Track program, for instance,

but Youth on Track does not operate across the State even though the evaluation for that program has been released.

Ms JENNY LEONG: Did the private donor pull the funding for that program because it was not achieving outcomes?

Dr TADROS: Absolutely not. It is just that they have refocused their energy on the detox program and all their funding is now being poured into the detox program.

Ms JENNY LEONG: Would you have details of the effectiveness of that program that you might be able to share with this Committee?

Dr TADROS: Absolutely.

The CHAIR: Referrals to Youth on Track must be made by the police or schools. Should other referral pathways be considered, for example, through Health?

Dr TADROS: Absolutely. I think that would be feasible as long as the case to client ratio is sufficient. By that I mean that we do not just get all these referrals and then do not have the staff to be able to manage it. As long as the ratios are sufficient I cannot see why they could not. The Youth Crime Prevention Program in fact is like that where it takes referrals from any source as long as a young person is seen to be going off track. They might have been referred to youth justice conferencing or have cautions or issues that need to be addressed. But, yes, as long as the back end of it is sorted through.

The CHAIR: Legal Aid has told the Committee that a scheme like Youth on Track which relies on referrals from police officers may struggle to engage Aboriginal young people. What would be Mission Australia's comment?

Dr TADROS: We certainly have not experienced trouble engaging young people. What we have been challenged by is we have tried to get dedicated Aboriginal workers working in those areas where there is a high population of Aboriginal young people and we have struggled to get them on board and then to retain them.

The CHAIR: Why do you think that is?

Dr TADROS: I cannot say that it is pay because the pay is pretty much the same in the sector. I think they just get more interesting and better offers or ones that take them back to their own communities. Obviously, Youth on Track is only in certain areas so they may have to come out of their communities to serve in those areas and so they prefer to go back to their community where they can work in those areas. And engaging with Aboriginal organisations, that is probably more on us than it is on the organisations that we need to engage with better and come up with better strategies for engaging Aboriginal organisations.

Ms JENNY LEONG: Some comments have been made on the extension of the Youth Koori Court. I think everyone that has made a submission so far has been supportive of the idea of that being extended. However, we have heard from Macarthur Legal Centre and in a number of other submissions about the need to look at other programs specifically targeting other communities and potentially supporting Maori or Pacific islander communities. We have also heard about the way that diversionary programs are developed for the large cohort of male detainees rather than by looking at the specific needs of young women detainees. Given your experiences across a range of areas, I wonder whether you would like to comment on support for different migrant communities and gender-specific programs.

Dr TADROS: In our submission we refer to a couple of programs in Townsville that work really well with the Aboriginal community. I think the opportunity we have is to work with communities in a program that works for them. I do not think you can have a program that can just be rolled out, particularly when you come to cultures. One program that I know we delivered in Mission Australia years ago was the Pasifika Support Program that was specifically working with the Pacific community. That was about providing culturally appropriate and sensitive supports. It engaged the police quite heavily, it engaged the schools and it engaged the Pacific community itself. It ran for a number of years because there was a high population of Pasifika young people mixing in the wrong areas and a high offence rate. So that worked with that community. We did try some stuff with the Arabic community at Lakemba, some mentoring programs. That did not work as successfully.

I think you have really got to codesign programs with the community and work out what is going to work for them. It is interesting that youth justice conferencing actually stems from New Zealand and Aboriginal communities in itself. Why that works with Aboriginal communities would be interesting to look at. I do not think there is one specific program for a specific community. I think you just have to codesign it.

Ms JENNY LEONG: In relation to the gender element, having visited a number of Juvenile Justice centres and heard from some of the young women and girls who are detainees they feel that because there is a

much smaller number of them the access to support and the kind of programs they get may not be the same. Given the cohort is a majority of young men, I wonder whether you see ways or means of looking at the gendered way that programs are developed and the support that is given to young girls and women?

Dr TADROS: I think there are two opportunities there. The first is in-house programs, if I can call it that, and making them useful for the target group and the audience that is in there—for want of a better way of putting it. A number of years ago we as a non-government organisation used to go into the detention centres far more actively than we do now. That door was probably open a little bit more. Having said that, as we have heard from previous speakers, in custody they are doing some great programs so maybe they do not need us. But the advantage of having us in pre-release is we can continue to work with them post release. If you are doing a living skills program or some sort of appropriate program for females you are starting with them while they are in. Then hopefully by the time they come out they at least know a connection within the community that they can engage with. Absolutely, gendered targeted and culturally targeted, Aboriginal targeted and LGBTIA plus—it needs to be suitable to all the target groups that exist.

Ms JENNY LEONG: In your introduction you briefly touched on homelessness. We have heard and read in a number of submissions about the challenges around housing, including young people being detained because there is not somewhere for them to go once they are released. We have also heard that the causes of homelessness are leading people to enter into the criminal justice system. Given the scope of Mission Australia's work and your priorities, could you touch on that? If the Committee were to make recommendations that could address legislative or specific policy changes that could have an impact on the ground, what do you think those might be?

Dr TADROS: Thank you for the question. I am probably going to go on a little on this so please forgive me in advance.

Ms JENNY LEONG: Please do.

Dr TADROS: Access to a range of housing supports is absolutely imperative. Bail housing is interesting, there have been some advantages to it and there have also been some challenges around it, which I can explore. We have thought about step-up and step-down models, housing models that basically work with the young person intensively where they need us and not so intensively where they do not need us. Youth foyer models, there are so many opportunities in that space that have not really been taken advantage of certainly in New South Wales. We had one with the Miller Live 'n Learn model and I know Southern Youth and Family Services at Wollongong operate one, but that is it.

Ms JENNY LEONG: Can you explain that in a little more detail?

Dr TADROS: The youth foyer model is basically a model that provides housing but it also provides education training on site. It is kind of like a university campus for kids who are disadvantaged. There are a couple of other models—there is one in Adelaide and I believe that Victoria has two. New South Wales recorded the most severe jump in homelessness from the 2011 Census and the 2016 Census, with 9,042 young people, 12 to 24, experiencing homelessness and nearly 11,000 people in other marginalised dwellings. Mission Australia has called on government to halve youth homelessness specifically by 2020 in order to successfully divert young people from the justice system. International examples demonstrate, as I said before, about the step-up and step-down models and how effective they can be. I also want to highlight the Everybody's Home campaign, which some Committee members may be aware of, and its website highlights five key areas.

First, is support for first homebuyers, resetting our tax system to make it fairer for ordinary Australians wanting to buy a home. Secondly, a national housing strategy, more low-cost properties mean more choices, making it cheaper and easier to find a home, with 500,000 new low-cost rental homes being asked for. Thirdly, a better deal for renters. Get rid of "no grounds" evictions and unfair rent rises so that millions of Australian renters have the security they need to create homes, build lives and raise families. Fourthly, immediate relief for Australians in chronic rental stress, increase Commonwealth rent assistance [CRA]. However, we know that young people are not eligible for that so finding something equivalent to the CRA would be ideal. Fifthly, a plan to end homelessness by 2030, with real effort we can halve homelessness in five years. With the Everybody's Home campaign we have had a number of peaks and a number of non-government organisations join the campaign. So drawing on the information that is available there.

Ms JENNY LEONG: Can you tell the Committee why Mission Australia thinks these issues around homelessness and housing are so crucial to diversionary programs in Juvenile Justice?

Dr TADROS: Stable accommodation is obviously one of the biggest challenges. When young people exit detention they are either put in crisis—we heard about the bail court and the Department of Justice being left to find accommodation. Often they are finding accommodation through services such as ours. It is not like

we can just kick someone out in order to make a space for the kid who has just been let out of detention. We see a system that is broken, to put it simply. We have maxed our crisis services and then that continuum of support in housing is limited. You have your crisis, then you have your transitional and the long-term housing options for young people where returning home is not a safe option or not an option at all due to bail conditions and whatnot. Young people need housing options as well.

Ms JENNY LEONG: In your introduction you touched on the issue of short-term funding models. I think it was also in your submission, but apologies if it was in another submission, around the prescriptive nature of some of the delivery outcomes that are required in funding. Can you briefly touch on those matters?

Dr TADROS: The Youth Crime Prevention Program—the program that I mentioned was a private donor—was great. We saw a need and an opportunity. We saw a need in the community to address some of those underlying issues. We were able to develop that program and deliver on that requirement. So we were not restricted, to put it simply again, with any government KPIs or evaluations. We did our own internal evaluation and we continue to do that. Youth on Track, on the flip side, has strong KPIs, a massive training module—I think in the submission we put down that our staff were required to complete 14 training modules with no regard for previous experience or qualification—and it is a three-year program. Many of the programs we have at the moment are three years; they used to be yearly. So the previous Juvenile Justice program was annual but since Joint Support and Youth on Track they are three-year programs. Ideally you want five plus five. So you have got your five year baseline and then if you are performing according to your KPIs and whatnot you get your other five—that is, a bit similar to what we do in the employment services where you get your five plus five. That would probably be better.

The reasons for that are sustainability of employment, so you have got the same staff who know where their employment is going to be in the longer term and communication and relationships with the community so you are engaging with the same community members. When we talk about the Aboriginal organisations, for instance, so not every two or three years we are churning over staff and a new batch of people have started, yet the people in those organisations are the same people who have been there for a bit longer than we have. Certainly funding models that are longer term and even programs—if you pilot a program for two years and you have done an evaluation and it seems successful, then let us get on with it and roll it out rather than wait until another evaluation on the same program comes through two or three years later. That seems a bit ludicrous. Do your evaluation, do your pilot, if the evidence is there then let us get on with it.

Mr EDMOND ATALLA: Homelessness is an issue in my electorate of Mount Druitt, particularly around cluster areas of social housing. It has been found that a relationship exists between juvenile crime and cluster areas of social housing. Should there be programs that target these vulnerable areas and should those programs be sent out to those communities, rather than waiting for someone to be referred to a youth diversionary program?

Dr TADROS: Absolutely.

Mr EDMOND ATALLA: Are there any programs in place that target those types of vulnerable areas?

Dr TADROS: I will start with the last question first. We have got the Youth on Track program in the Blacktown-Penrith area that Mission Australia currently operates. I think we are now going into our second year of operating that program. That is the program we were referring to where Police and Education can make the referrals. Should there be programs targeting those areas? Absolutely, but as long as it is a systemic change to the way we deliver the programs and not just targeting the hit list of kids who are troublemakers. Whilst it is good to have that list, it is how we respond to those young people. There are systemic issues in poverty and entrenched unemployment. Generation after generation there is a huge population of young mums in that area that we are working with. So as long as the individual is not seen as the problem and we address the systemic issues that exist in the area I think there is absolutely an opportunity and there could be a whole range of programs delivered out there.

We have got the Kingswood Mission Australia Centre in Bringelly Road at Kingswood, we run a range of programs there. We have got parenting programs, we have got family day care, we have got youth crime prevention programs and homelessness programs all in a one-stop shop. Then right next door we have social and affordable housing, which is tenancy managed by Mission Australia Housing, another arm of ours. It is kind of providing those holistic programs where you are addressing a number of issues, not just Juvenile Justice. If you just target Juvenile Justice and the young person, what happens if their mother or father is dependent on drugs and alcohol? You are targeting the young person without addressing all the other issues surrounding it.

Mr EDMOND ATALLA: Last year legislation was passed to evict people from housing due to antisocial behaviour—namely, three strikes and they are evicted—but I am unsure whether anyone has been evicted as yet under that legislation. Is that a solution or is it just moving the problem elsewhere because when they are evicted they are not given alternative accommodation and they basically end up homeless?

Dr TADROS: That is right. We also know that if you have been charged with drugs in the inner city then you will not be allowed to get accommodation in certain inner city areas. Where do these people go? They end up on the streets rough sleeping, they end up potentially committing more crimes to get more money to pay for the rent that they cannot afford. You are creating the cycle, rather than breaking the cycle by not providing more accommodation options and homes. If you provide more homes—there are massive amounts of developments occurring and property developers are making substantial amounts of money. I think it is only 15 per cent of all new builds are supposed to have some sort of sociable and affordable housing, but not everyone is meeting that target. That is where the Everybody's Home campaign comes in to settle these requirements in order to be able to provide more housing options for everyone, and of course for juveniles.

Mr EDMOND ATALLA: What programs does Mission Australia have in place for people who find themselves homeless?

Dr TADROS: We have a range of programs. Mission Australia delivers the specialist homelessness programs for the Department of Family and Community Services. We run crisis services for young people. We have, for instance, two crisis services in Canterbury-Bankstown. One is called Nick Kearns House and the other one is called Alan's Place. Each has about six to eight beds available. Young people can stay in that accommodation for about three months. That is when we work with them to get transitional property. We have the Grove, for instance, at Penrith, which although it does not provide accommodation it works with the young people to address whatever issues they might be facing and ultimately try to get them a home or reconnecting with their family where home is an opportunity of return. Ivanhoe Estate is a massive undertaking at Macquarie Park. There will be something like 3,000 homes. It will have an aged care facility and a child care centre. That is a multimillion dollar project.

There are the community strengthening projects in Claymore, which is a huge social housing estate. We have some community development workers in there who are not necessarily doing the one-on-one work but are trying to engage the community and get the community to take responsibility for some of the issues and challenges they face. If it is about employment, how can we get better employment in the area? If it is about the gym that does not exist, how do we go about getting that? If it is about young people running amok in certain areas, what can the community do about that? It is a bit about the collective impact. There are so many resources. Often you hear the commentary around whole-of-government, but it is also a whole-of-government and sector—so using the resources that everyone has to come up with some of the solutions.

Mr EDMOND ATALLA: The Committee has heard questions about expanding who can refer people to the Youth on Track program. Is it currently running at capacity, and if there were more referrals to the program would there be resources to cope with that, or does that require additional resources?

Dr TADROS: I think we would probably need to go and do a bit of analysis around that—not just for Youth on Track that Mission Australia delivers, because obviously there are other organisations that deliver it—just to work out what was the key performance indicator, what was the staff-to-client ratio, either that we tendered for or that was agreed to, and work out whether or not we are exceeding that. Because if we are not, certainly there is a capacity to take it on. If there is, then we just need to adjust—

Mr EDMOND ATALLA: Are you running at capacity on this program at the moment?

Dr TADROS: I do not think we are in all the areas, but I would have to take that question on notice and come back.

Ms STEPH COOKE: The Committee has heard about the scarcity of diversionary programs in regional New South Wales. Do you agree that this is a problem, and if so what should or could be done to address it?

Dr TADROS: Absolutely I would agree, and I would agree that it is not just in regional New South Wales. I think in my introduction I commented that we have some great programs that we know work effectively. The Pasifika support program, for instance, we know worked really well, and it was probably due to close because we have reduced all the reoffending for the Pasifika community. But we knew that Lakemba and Bankstown were picking up some issues: So what could we have done at that point in time?

Programs such as youth crime prevention where you are addressing some of those criminogenic needs at the early intervention rather than post release. Post release we already know they have some issues. We

probably know that they have got some trauma; we know that they have some mental health and physical issues. Hopefully they have somewhat been addressed. Unfortunately, we see people wanting to return to custody because that is the only place they can get detox. Is that what it has come to? Surely we should be able to provide detox for the under 18-year-olds outside of the system.

That is another diversionary program that we often get a lot of feedback on. The New South Wales Government put in $95 million over four years in the drug package. But less of that was available for the under 18-year-olds and more for the 16- to 25-year-olds. We certainly see a lot of young people under 18 with drug and alcohol issues who ultimately need detox. Unless you are prepared to come to Sydney and you are prepared to mix in with 25-year-olds, who probably have a more intensive history of drug use, most people want to go back to custody because they have that safety net and they know that they can get the support they need.

Aside from that, as much as headspace is great, for instance I had a young person I had to refer who was depressive, not suicidal but depressive, and there was a four-week waiting period. By the time I have engaged them—this is as a conference convener—and got them motivated enough to do something about it, you want to act now, you want to get them in to see someone within 48 hours if not 24 hours. Because that opportunity is lost: they have lost interest, they get caught up in something else in four weeks time, and I am not there or the caseworkers are not there at that point of time. Four weeks later, there is so much that happens. There is a significant need for diversionary programs in many different areas, I would say.

Education is another one. We have got some great programs where we work in with the schools and we probably did that more so before—is it Gonski—where all the principals had access to the money and they could do with it what they chose to do in their local areas. Prior to that we were in schools a lot more often. We have the Ryde project, for instance, where we are using that collective impact opportunity to engage education, juveniles and schools to say this person is falling off the rails, how can we support them better, and between us we work out who is going to be the lead case manager. Education is another opportunity where if they are starting to disengage from school, what are they getting up to when they are not at school? The youth education liaison officers are limited in their capacity to engage, just because of their ratios as well. I think there are diversionary programs in a number of areas where the potential to do something is there.

Ms STEPH COOKE: The Committee has also heard of a lack of drug rehabilitation services for children and young people, which you have touched on. Would you elaborate further on that for children and young people, particularly in regional New South Wales?

Dr TADROS: Young people under 16 are unable to access detox services through specialist services or hospitals unless they are on custodial sentence or order. The age-appropriate facilities for these young people are not available in the local community. They often have to travel to Sydney and other metropolitan areas for detox and it is inappropriate and costly for young people. That is what I have already said. I do not think there is anything more I can elaborate on, other than the concerns that young people who want to access detox have to come to Sydney to a facility where they are hooked up with 16- to 25-year-olds—and you never want to mix under 16-year-olds with 25-year-olds, not in accommodation or in detox. They seem to be happy to go back into custody because that is where they are going to get the detox, and probably the safety net and accommodation and everything else that we should be providing outside the system.

The CHAIR: The Committee heard that competitive short-term funding can undermine much-needed collaboration between the services as they compete for resources and clients. I think you have touched on this with the three-to-five year model. Is five years an optimum model?

Dr TADROS: I think five plus five. If I were the person issuing the contracts I would want to make sure that the contracts are being delivered and that the performance is being achieved. If Mission Australia is on the other end of a contract we have not won and we can see it is not being delivered as effectively as we potentially could deliver it—talk about tickets—then we would want to be able to have the opportunity to bid for a contract where we have not been successful, and vice versa. I think five plus five would be the preferred model, but at best three years. Certainly, the one-year models are just absolutely ridiculous. We could have one-year models that operate for 18 years. That is 18 years of inconsistency.

The CHAIR: In your paper you call for the return of the New South Wales Youth Drug and Alcohol Court. What prompted you to make that recommendation?

Dr TADROS: I guess because there is such a specific need for young people who have drug and alcohol issues that because the underlying issue—

The CHAIR: Would you divide it up into 16- to 25-year-olds and 16-year-olds and younger?

Dr TADROS: No. I think the drug court itself could be 25-year-olds and under. The challenge is that obviously juveniles are 18-year-olds and under. As soon as you start to talk over 18 they have a whole different criminal system.

If I was to stick with the under eighteens, yes, it was discontinued in 2012. The evaluation said that it was positive and then all of a sudden it was drawn to an end. It was delivered by the Salvation Army, not by Mission Australia. I think the whole sector at the time was a bit bedazzled about why it had been closed down. Maybe it was funding; who knows? Maybe there was other inside stuff going on that we are not privy to, but in this model I think you are diverting people away from detention to deal with their underlying drug and alcohol issues. The only thing I would add is making sure that there are enough diversionary or support services and specialist support services to deal with the drug and alcohol issue. If you have a magistrate in a drug and alcohol court who says, "Yep, you're not going to juvie because we know you've got a drug and alcohol problem. We'll send you to detox and rehab." Detox and rehabs have to be available to send them to. Absolutely we support the model.

Ms JENNY LEONG: In your submission you referred to reform of bail laws and concerns that I guess link back to some of the housing elements in some cases—curfews and other things. One young detainee provided the example of being given temporary accommodation somewhere when they had been released and then needing to get to Centrelink, jumping on a train, and finding themselves not having a ticket. The breach of their bail laws then finds them in trouble again when really what they were trying to do was just connect with the system. That is one example that the Committee heard directly. I wonder whether you could talk a little more about your reasons for making the recommendations to look at reforming the bail laws for young people.

Dr TADROS: Absolutely. I might just start with the accommodation provided for young people who are under bail orders. Just to give a specific example, as a conference convener I was allocated a particular matter where I had to go and see a young person whose accommodation was expiring that day with the Juvenile Justice identified accommodation. I went out and saw the young person and the focus was certainly not on the offences she committed. It was the fact that by 4 o'clock that day she had to have her bags packed and move. Move to where? The person who was providing that accommodation was obviously only contracted to deliver it until 5 o'clock that day, so it was not on them to take responsibility for it; it was on Juvenile Justice to find accommodation. But where do you put someone when there is no accommodation option? In a motel.

The CHAIR: We have heard that.

Dr TADROS: Imagine your own child who is under 18 in a motel. Motels at Campbelltown are not the most ideal arrangements. Certainly the lack of appropriate services to support young people to obtain bail and meet bail conditions is, we believe, contributing to the high custodial remands and potentially reoffending. Again, if they have nowhere to sleep, they are probably sleeping somewhere unsafe and then being told by police to move on, particularly if they have their ID and they are identified as already having issues. It exacerbates an already difficult situation. Some people are granted bail in New South Wales and still remain in custody due to a lack of appropriate community accommodation. It is imperative for the courts and the police to examine whether young people have access to safe and secure accommodation. I think you all get that by now. It is a difficult system. I think the bail assistance line is great because then at least it gets some people out of remand where we know the accommodation is available. I think the issue is when the accommodation is not available, or if it is only available for a short time.

The CHAIR: Legal Aid has told the Committee that Youth on Track employs the Changing Habits and Reaching Targets, approach, and that it is not clear that this approach is effective with Aboriginal young people. Do you have any comments on that?

Dr TADROS: I think we have only delivered it for a short time so I would probably have to take that on notice. I am hoping that Dini is taking all these "take on notice" notes for me. Certainly in relation to the Blacktown one, I do not believe it has been an issue. The challenge with Changing Habits and Reaching Targets [CHART] is the length of time it takes staff to get trained in it. I know one of my managers spoke about being flexible to meet the local needs in a therapeutic way or in a way that works with particular clients. Sometimes, as a therapist who has a lot of experience, when you are directed to use a particular model, it can drive workers up the—whatever. Psychologists and social workers have a lot of skills and a lot of tools in the toolbox that they can draw on and they are limited in their capacity to use those tools because they have to use CHARTs. But in regard to whether or not it works for Aboriginal communities, I can check with our western New South Wales teams and see what their response is.

The CHAIR: There has been some difficulty obtaining referrals to Youth on Track programs, particularly from schools. How do you think that issue could be addressed?

Dr TADROS: You have got to connect with the local schools and the local principals and the lower levels from the school principals, such as the education liaison officers, your counsellors, and even careers advisers who get a lot of wind of what is going on—different hierarchies within the school—but also to take it up a notch, the regional education managers. They need to be embracing the program. It is a bit like the bride project where we had the Department of Family and Community Services [FACS], the Department of Education and we had the community and the schools. Everyone was on board and then all of a sudden the program was pulled. Again, it was a really effective program, and the program was pulled. It sounds like there were issues between education and FACS about who owns the program. It is just sitting in this no man's land. I think that Youth on Track and engaging in more education, you have just got to look at it from the different levels—from right at the front line of schools. Maybe it is marketing material. Maybe the services delivering the program are not effectively marketing the program. It is a bit like youth liaison officers [YLOs] and their referral to youth justice conferences. You have got some YLOs who are great and others who are not. Is that because they do not believe in the program? Is that because they do not know enough about the program? Getting to the root cause and managing it that way I guess is probably the best recommendation I can give.

The CHAIR: You mentioned in your opening statement or during the course of the inquiry that there are 14 different modules?

Dr TADROS: In Youth on Track that needs to be completed within 12 months.

The CHAIR: But the thing I am trying to draw out is that you said there was no consideration given for previous experience in various areas.

Dr TADROS: No.

The CHAIR: You just have to sit for them, even though you may have been working in that area for countless years.

Dr TADROS: You have got to sit through the 14 modules, yes.

Ms JENNY LEONG: I also am quite fascinated by this. Presumably someone coming in, to be able to be employed and to be able to do those modules, has to have professional skills first?

Dr TADROS: Absolutely.

Ms JENNY LEONG: We are not talking about a requirement where someone is coming in with no specific training.

Dr TADROS: No. We hire, I think, community service workers level 3 under our enterprise agreement, which means they have to have a minimum of two years experience and a social work or psychology or some relevant degree.

Ms JENNY LEONG: Right.

Dr TADROS: So they already have—

Ms JENNY LEONG: They already have a degree?

Dr TADROS: Yes, absolutely. They already have a degree. I think what Juvenile Justice tried to do there is that the pendulum has swung in the sense that we were not delivering and the Department was not investing in any training for Juvenile Justice staff for services where we are delivering Juvenile Justice programs. It was to the line in just being able to pay for your staff and maybe just really basic stuff. So much money was invested and there were 14 modules of training. Obviously you have to pay a trainer for those 14 modules, and they do not come cheap. But then if I am bringing people from western New South Wales down to Sydney to attend that training, that is a couple of days out and a couple of nights worth of accommodation, et cetera. It went from no training to everyone has to complete 14 modules in 12 months, and no regard for recognition of prior learning or something like that.

The CHAIR: Yes. You see that in other areas where there is recognition of previous experience, but there is just no flexibility. I can understand now the cost of you bringing people in from regional areas.

Dr TADROS: Yes, absolutely. Even I think there was an issue around things like the first aid certificate and mental health first aid. It is a certificate, regardless of who it came from, but I think it is also potentially part of building that culture within the teams that exist. But there are other ways of doing that that does not involve the same person sitting through CHARTs. If they have already done CHARTs or if they have already done the Act Now Together Strong [ANTS], or they have already done some of the other modules in some other capacity, there needs to be some recognition of prior learning.

The CHAIR: I am assuming that the first time you find out about it is when they release that program and the conditions?

Dr TADROS: When we tendered for it.

The CHAIR: There are no meetings beforehand, or seeking of advice?

Dr TADROS: Codesigning? Not in this particular program. I think we have done codesigning with government in other areas, but certainly this program was very specific. There were some consultations but it was more, "This is what we are going to be doing. If you really have commentary, then we will hear it out." It was very specific when the tender came out: This is how many staff; this is the level you are going to pay the staff; and this is the training. We had to deliver to specifications and budget for that. There was an extraordinary amount allocated to training. I think we just need to swing the pendulum back into the middle somewhere and probably allow some localised needs analysis: What is it that this team needs?

I get that they are trying to create that baseline so everyone is trained in the same way, but people do not last in Youth on Track long enough to create that baseline. The baseline might be some core things like mental health first aid, a first aid certificate and a degree. If you have covered your degree you have therapeutic models and tools in the kit to draw on. When you step it up to the next level that is probably where you are better off doing some localised needs analysis. What does this individual need and what do these teams need?

Ms JENNY LEONG: And also what communities are they working in? A number of submissions have raised the issues of cultural awareness training and specific communities training. Those kinds of things are very different depending on where you are based in New South Wales.

Dr TADROS: Absolutely.

The CHAIR: As an overview, perhaps a recommendation you would like to see from this Committee is more codesigning?

Dr TADROS: Certainly.

The CHAIR: Location dependent—different out west from the inner city—as one size does not fit all.

Dr TADROS: Definitely codesigning would be appropriate where there have been positive evaluations rolling with the program with no hesitation.

Ms JENNY LEONG: You mentioned one that is no longer going on, another that is at risk and others that are currently being funded that people think are great things being rolled out. I am looking at the person you said was taking notes. It would be great to get specific recommendations on what those programs are that you believe are successful that are not continuing and those that you are running in one community that could be effective in other areas. It would be helpful to get a sense of that.

Dr TADROS: Sure. We have referenced it in bits and pieces throughout the submission but we will draw it out to make it clearer. When we talk about youth justice conferencing or a range of other programs that want to be able to refer to specialist services, there is an increasing need for diversionary programs. We talk about case management as an appropriate model because you can tap into whatever a young person needs and work through that. We talk about detoxing and rehab for under eighteens and the specific need for that. We talk about whole of government approaches and the collective impact approach and we talk about housing—Everybody's Home campaign that probably speaks far better to it than I am able to. We talk about early intervention programs and continuing to build the positive relationships which we know some police officers do well and others are potentially lacking. We were talking offline before about Police Citizens Youth Clubs [PCYCs] and how in some areas they are phenomenal and in other areas you might as well shut up shop and redivert the money. That is quite negative but it puts it out there that there is an opportunity—I keep using that word—in some of the PCYCs that are not delivering as effectively as they could be, to turn them around to deliver for the community and ultimately for young people.

We can talk about the intersectional disadvantage experienced by Aboriginal and Torres Strait Islander people and risk factors such as further victimisation and further cultural dislocation and we can tap into that and make sure we are doing the most we can. I have spoken about systemic barriers. I do not want to see the hit list of juvies that we target without addressing some of the systemic barriers—entrenched poverty, substance misuse, mental health and intergenerational unemployment.

The CHAIR: We have been joined by the member for Epping. It might be hard for the member to ask questions at this point.

Dr TADROS: You can watch the video.

The CHAIR: Well said. Dr Tadros, thank you for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any questions?

Dr TADROS: I am happy to do so.

The CHAIR: It was informative. I speak on behalf of all Committee members when I say that they are impressed with the good work Mission Australia does and we wish you well in the future.

(The witness withdrew)

ANNA DAWSON, Senior Solicitor, Indigenous Justice Program, Public Interest Advocacy Centre, affirmed and examined

VICKI SENTAS, Senior Lecturer, University of New South Wales Law Faculty, affirmed and examined

The CHAIR: I welcome Ms Anna Dawson from the Public Interest Advocacy Centre and Dr Sentas from the University of New South Wales Law Faculty. Before we proceed, do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Ms DAWSON: No.

Dr SENTAS: No.

The CHAIR: Would either or both of you like to make a brief opening statement before we proceed to questions?

Ms DAWSON: Yes. Thank you to the Committee for the opportunity to give evidence to the inquiry today. Since about 2012 the Public Interest Advocacy Centre [PIAC] has had a focus on police accountability and the exercise of police powers through both strategic litigation and policy. This has involved an emphasis on the impact of police powers on young people and particularly on Aboriginal and Torres Strait Islander young people. Our current police accountability practice involves advising and representing clients in complaints and claims of unlawful conduct against the police. Our clients are mostly referred from the Aboriginal Legal Service and the vast majority are young people. Many live in regional areas in western New South Wales and others reside in outer Western Sydney suburbs.

Our evidence to the inquiry today draws upon this work. In relation to the terms of reference of the inquiry our evidence is directed to the way in which youth diversionary efforts work with police and bail issues. Our primary observation from our work is that in some cases police powers and practices are being exercised in ways that undermine, rather than support, efforts to divert young people away from contact with the criminal justice system. There are two main areas of concern in this respect that we want to highlight.

The first relates to the Suspect Target Management Plan [STMP]. As Committee members may be aware, the Suspect Target Management Plan is an internal intelligence tool used by the NSW Police Force that purports to use risk assessment to identify suspects. It is also a policy tool that guides police interaction with individuals subject to the program. Within our police accountability practice we have acted for young people who have been placed on the STMP and our work involves advocating for those young people and advising on the lawfulness of police action that results from the young person's placement on the STMP for the purposes of investigation, complaints and civil claims.

The Public Interest Advocacy Centre [PIAC] has also been a leading member of the Youth Justice Coalition and contributed to the 2017 report examining the New South Wales Suspect Target Management Plan. That report is titled "Policing Young People in NSW: A study of the Suspect Target Management Plan". The co-author of that is Dr Vicki Sentas, who is with me today. Dr Sentas will shortly take the Committee through some of the key findings and recommendations of that report in detail. However, I note that key qualitative findings from the STMP reflect those of our young clients, namely, that those placed on the STMP experienced increased surveillance by police officers characterised by a pattern of repeated contact such as stop and search and move on directions, and visits to their home.

Some people on the STMP and some young people have minimal criminal records or are suspected of only minor offending and the increased police monitoring and surveillance are perceived by those young people as arbitrary and without justification, contributes to poor police community relations, and undermines their wellbeing. Most importantly for this inquiry the concern is that the same children being targeted for diversion away from the criminal justice system, such as by participation in the Youth Koori Court or through programs such as Youth on Track, are at the same time being targeted by police for increased monitoring and police contact under the STMP.

In this way there is a real concern that the placement of a child on the STMP is incompatible with a youth justice framework that is focused on diverting young people out of the criminal justice system. Good work that is being done with young people to address their underlying issues on the one hand has the potential to be undermined by policing which increases surveillance contact and risk of arrest. We note that other submissions to this inquiry have also voiced concerns about the application of the STMP to young people. Those have included submissions by the NSW Coalition of Aboriginal Regional Alliances, the Aboriginal Legal Service, Just Reinvest NSW, Legal Aid NSW, the Law Society of New South Wales and the President of the New South Wales Children's Court.

We urge the Committee to consider the recommendations in the STMP report and in particular the recommendation that the NSW Police Force discontinue applying the STMP to young people under the age of 18 years of age. The second area of concern is our observation that the principle of arrest and detention as a last resort is not always being routinely adhered to by New South Wales police officers in deciding what action to take when confronted with suspected offending or breach of bail by young people. We see this as a particular issue in respect of breach of bail.

In this context our casework shows police failing to consider alternatives to arrest such as issuing a warning or issuing an application notice as they are able to do under section 77 of the Bail Act and also, in deciding what action to take, failing to consider the matters they are required to take into account under section 77(3), such as the triviality of the breach and the particular circumstances of the individual. In these circumstances we see young people being arrested and detained, sometimes overnight in police cells or in juvenile detention centres, for minor breaches of bail in circumstances where the underlying alleged offending is often minor and where they are ultimately unlikely to be sentenced to any period of detention.

Figures suggest that over half of the young people on remand are there for breach of bail. It has also been acknowledged that detaining young people on remand is likely to increase their risk of further offending in the future. It goes without saying that wherever possible we want police discretion to be exercised in a way that diverts young people away from arrest and detention wherever possible. In accordance with these observations, we have made some recommendations about strengthening law and practice in relation to these issues.

There is one final point we want to mention that we think is important in any discussion about youth diversion efforts and contact with police and that is the issue of raising the age of criminal responsibility. We note that this issue was considered in depth by the Royal Commission into the Protection and Detention of Children in the Northern Territory. The Commission ultimately recommended raising the age of criminal responsibility from 10 to 12 years. We note that this also reflects the recommendation of the United Nations Committee on the Rights of the Child. In our view a real commitment to youth diversion in New South Wales needs to involve raising the age of criminal responsibility and we recommend that the criminal age of responsibility should be set to at least 12, in line with the recommendations of the Northern Territory Royal Commission. That concludes my statement. I will hand over to Dr Sentas.

Dr SENTAS: I will be brief. Thank you for the opportunity to give evidence to the inquiry. I will briefly overview some of the key findings and recommendations of the report as they relate to the terms of reference of the inquiry. The research drew on a mixed methodology. It included limited quantitative data on the program obtained from the NSW Police Force, analysis of case law and court records and importantly de-identified qualitative case studies of 32 young people's experiences drawn from interviews with lawyers and analysis of case files. This report is an exploratory study. It identifies patterns of impact and sites of further investigation and scrutiny.

Briefly our research identified three key findings relevant to the inquiry: first, that the STMP is contributing to detrimental social outcomes for young people, in particular, undermining opportunities for diversion and increasing opportunities for criminalisation. In the sense that the STMP seeks to disrupt a young person's everyday life in order to pre-empt their potential future offending, this means constant surveillance and the exercise of coercive police powers. By design the STMP amplifies experiences of stigma, alienation, poor community relations and social exclusion.

In particular, we documented worrying levels of extreme household stress particularly experienced by Aboriginal families where a young person in the family was placed on the STMP. To explain how this intentional disruptive logic of the STMP is inconsistent with diversionary principles, we document in our report cases where a young person is placed on the STMP in spite of court diversionary schemes, including section 32 orders under the Mental Health Act or Youth Koori Court programs. But more broadly, young people placed on the STMP tend to not be the beneficiaries of police cautions and warnings for minor offences.

In addition, our research found the STMP unnecessarily criminalised young people by sometimes detecting minor offences such as the possession of cannabis that they might otherwise be cautioned and warned about. The STMP also generates charges as a result of increased antagonistic contact with police like offensive language charges, resist arrest and assault police. Our second relevant finding is that the STMP is encouraging unlawful police conduct in interaction with young people. Our research found a pattern where police exercise personal search powers and vehicle search powers not otherwise authorised under the Law Enforcement (Powers and Responsibilities) Act merely because a person is placed on the STMP.

It is quite clear legally that being on the STMP does not ground the requisite reasonable suspicion. Lastly, the STMP is not an appropriate crime prevention tool. We found the STMP, in our analysis, to be inconsistent with best practice in crime prevention for young people. International research is clear that coercive

or deterrent-based policing is not effective crime prevention for young people. However, there is an evidence base for holistic and therapeutic programs that do address the causes of offending. The STMP is not designed or implemented in a manner that indicates it is in communication with existing therapeutic programs that do seek to address the causes of offending, as my colleague mentioned, Youth on Track, and also the Police Citizens Youth Club [PCYC] schemes. For example, the cohort often referred to PCYC or Youth on Track are the same cohort on the STMP. So we recommend that children should be removed off the STMP and onto a therapeutic program if they are identified of being at high risk of offending. That is why our key recommendation is to take young people off the STMP. I will leave it there. Thank you for your time.

The CHAIR: The Committee has heard that a greater range of offences should be able to be dealt with under the Youth Offenders Act 1997 in appropriate cases. Do you have any comments about that?

Ms DAWSON: Given our practice is mainly police powers, that is not our area of expertise. I have nothing to add on that.

The CHAIR: A young person must admit to an offence before police can issue him or her with a caution under the Young Offenders Act. Some stakeholders argue that this requirement stops some young offenders being diverted before the criminal justice system. Should this threshold be lower?

Ms DAWSON: Again, that is really a question of criminal procedure and is not something in our day-to-day expertise.

Mr DAMIEN TUDEHOPE: Would you agree with me that your analysis was done without any significant input from the police?

Dr SENTAS: We did seek input from the police—

Mr DAMIEN TUDEHOPE: No, I am not questioning that. They did not provide you with any material other than what you could have obtained under the Government Information Public Access Act.

Dr SENTAS: Yes, that is right.

Mr DAMIEN TUDEHOPE: Consequently, you have no eyes on the reasons why they would have put in place a particular STMP?

Dr SENTAS: That is correct. We have certainly not seen the policy itself, so we do not know the official risk criteria or the methodology behind that risk criteria.

Mr DAMIEN TUDEHOPE: Would you agree with me that in relation to high-risk people there might be some benefit in having these policies in place?

Dr SENTAS: There are a number of reasons why young people—

Mr DAMIEN TUDEHOPE: No, just answer the question. I am referring to high-risk offenders.

Ms JENNY LEONG: There are questions and there are answers.

The CHAIR: Yes.

Dr SENTAS: I am happy to answer that. It is not clear what being categorised as a high-risk offender means. For example, one of our case studies which is documented from memory on page 36 of our report, talks about a young person named Lucas, which is not his real name. Lucas, we understand from his police fact sheet, was classified as a high-risk offender, yet Lucas' only priors were larceny for stealing a phone. The Children's Court magistrate confirmed that Lucas was not a risk to the community, he was not a violent offender and that his offending was a direct result of his quite serious cognitive impairments and his behavioural diagnoses. So that is one clear example. We could not find consistency in young people's experiences and their history as to why they might be identified as a high-risk offender as opposed to a low-risk offender. In fact, those categories are not available to the young person or the lawyer. It is only when police on rare occasions will put in criminal proceedings and identify that the young person is, in fact, a high-risk offender.

So the short answer to your question is, without knowing the risk criteria or the methodology, I cannot conclude whether it is appropriate. But more broadly, our research indicates that even for those young people who, say, committed serious violent offences in the past, the approach of the STMP is, as I mentioned, constant interaction but not therapeutic interaction. It is not designed to address the causes of the offending. Even for those young people who have a history of repeat violent offences there is a separate question as to what police ought to be doing or could do to keep communities safe. But merely placement on the STMP would not appear to be addressing the causes of that offending.

Mr DAMIEN TUDEHOPE: But it might be one tool that the police could use, is it not? If you took it in conjunction with all the other tools which would be available, it may be one tool.

Dr SENTAS: It would depend what the purpose of the placement on the STMP would be. If police had evidence that a young person had committed an offence, the police already have existing powers to engage with that young person, to charge them with an offence and to arrest them if required. Our opinion is that the STMP is not helpful in police investigative practice.

Mr DAMIEN TUDEHOPE: Let me put this scenario to you. In circumstances in some regional areas where there is a spate of similar crimes—in the Riverina there may well have been a spate of car stealing, car destruction or burnouts and the police are potentially aware of someone or a group of people involved in this practice—why would STMP not be a tool which the police would use to try to deal with that sort of event?

Dr SENTAS: Certainly, the NSW Police Force argue that it is a more efficient use of resources to target that smaller number of people who are known to have committed offences in the past. That is only one category of people on the STMP, and even for that category of people, I would say it undermines the basic rule of law principles, the criminal justice system and the reach of police powers. If police believe that someone in particular has offended before, unless they have factual objective evidence to suggest that the person is about to commit an offence, you are merely policing people based on what they have done in the past. It comes up against principles around rehabilitation or the finality of criminal offending. There have been some great police programs where police have identified a young person and referred them on to PCYC and Youth on Track. Police do have an important role in crime prevention but we would suggest that it would be around identification and appropriate referral in an interagency environment rather than the STMP which is geared towards the use of often antagonistic and coercive powers rather than it being a community-style policing program.

Mr DAMIEN TUDEHOPE: I will take you to recommendation 6 on page 15 of your submission which says:

> Young people under the age of 14 years should not be held on remand, and should not be ordered to serve a term of detention, unless they have been convicted of a serious and violent crime against the person, present a serious risk to the community, and the sentence is approved by the President of the Children's Court of NSW.

Other than the last provision, which is related to sentencing and bail and not remand, how is that different from the Bail Act 2013? How is that recommendation different to what already exists in the Bail Act?

Ms DAWSON: The first thing is that there is no consideration in section 77 of the Bail Act that requires police to specifically consider an offender's age.

Mr DAMIEN TUDEHOPE: It does not say it.

Ms DAWSON: So that is the first point. The second point is that the way that section 77 is currently drafted, it does not direct the police to take certain action; it just sets out a series of things that the police can do after forming a reasonable suspicion or a belief on reasonable grounds that a person has failed to comply with their bail, or is about to. If the police form reasonable belief there are certain things in section 77 (1) that they can do. Section 77 (3) says that before the police officer takes any of that action, they have to consider the following matters. On a strict view of the reading of the law, that would be complied with if the police officer looks at section 77 (3) and just says, "Yes, I have looked at it", and then proceeds to arrest even if the breach of the bail is trivial and even if the breach of bail is from a very young offender, say an 11 year old. In fact, it kind of sets those things out, but in our view section 77 does not go far enough.

Mr DAMIEN TUDEHOPE: Look at your recommendation again. I am not talking about section 77; I am talking about bail applications. Your recommendation is talking about a bail application.

Ms DAWSON: Perhaps I should clarify. Our recommendation is really in relation to when somebody is picked up for breach of bail they should not be held on remand.

Mr DAMIEN TUDEHOPE: But that is bail. A person should not get bail in circumstances where they have been convicted of a serious violent crime against the person and present a serious risk to the community. Those are the current provisions in the Bail Act.

Ms DAWSON: I think we might be talking at cross-purposes. That is all. My understanding of this recommendation is that young people who are picked up for breach of bail should not be detained, be held on remand.

Mr DAMIEN TUDEHOPE: This is for a breach of bail? I do not want to belabour the point but it strikes me that you have repeated the provisions of the Bail Act in relation to someone's eligibility for bail.

Ms DAWSON: I am happy to take that on notice if you like and respond to that.

Mr EDMOND ATALLA: You have indicated that criminal responsibility should be raised to at least 12 years of age. Does that also extend to diversionary programs? Are you saying diversionary programs should only be applied to people who are 12 or older or should they be applied earlier?

Ms DAWSON: No, I think the thinking is that there certainly will still be circumstances where young people under that age come to the attention of police for what otherwise would be offending behaviour but there need to be programs in place to properly engage and divert it at that young age so as to make sure that it is not just a matter of everybody being flooded into the system at 12. I think from memory Judge Johnstone, the President of the Children's Court, has made a similar comment in his submission and we would endorse that.

The CHAIR: He repeated that today. He gave evidence earlier.

Mr EDMOND ATALLA: Do the diversionary programs only start at 10 at the moment?

Ms DAWSON: I cannot say that I know for sure that that is the case. That is my understanding but I suppose it just depends on the program whether they take children that are younger than that age.

Mr EDMOND ATALLA: Youth on Track is a voluntary program. I think I read in one of the submissions that there is reluctance from Indigenous youth to participate in the program. Can you comment on that?

Dr SENTAS: I am not aware of those particular comments but that seems consistent with the concerns raised by Aboriginal controlled community organisations and Aboriginal workers that the most successful programs are those that are culturally appropriate and that are designed by Aboriginal communities for Aboriginal communities. There is international research and local research to suggest that when Aboriginal communities have autonomy and are directly involved in crime prevention and diversionary programs there is evidence of greater success than when they are not involved. That might be something to consider in the expansion of programs in the future.

Mr EDMOND ATALLA: But are there no diversionary programs or Youth on Track programs that are culturally designed? We have heard that the program that is in place is one size fits all. Is that the current situation and are you recommending that there should be more tailored programs?

Dr SENTAS: I cannot comment on Youth on Track in particular because I am not involved in the design of that program. But certainly at the local community level there are a range of programs that involve Indigenous communities. The nature and extent of whether or not they have been evaluated I can take on notice. A good example is the community in Bourke where Just Reinvest has certainly facilitated a fantastic relationship with the local area command and is beginning to roll out quite interesting diversionary programs, which I think is worth examination. The early evaluations of Youth on Track that I have read are very promising. Any opportunity to expand Youth on Track with tailored opportunities for Aboriginal young people would certainly be welcomed and it seems consistent with best practice in that area.

Ms JENNY LEONG: I am looking at the report and the recommendations relating to the sharing of data and the effectiveness of the Suspect Target Management Plan. Could you tell us currently what kind of program data is reporting to the Bureau of Crime Statistics and Research and what kind of analysis BOCSAR can provide on the public record as to the effectiveness of these programs?

Dr SENTAS: We understand that data is not provided to BOCSAR. That has been confirmed by BOCSAR. That is why our recommendation is that data be provided to BOCSAR and that they provide an evaluation. There are estimation methods that could estimate the effect of the STMP in crime prevention looking at longitudinal data, but we say that is not sufficient. It is a start to evaluate the claim by New South Wales Police that this is an effective form of crime prevention. However, we would say that this does not measure appropriateness and certainly the STMP should be assessed against the legislative and policy frameworks for youth justice and best practice around crime prevention as well. But one of the key problems with the STMP is we do not know how it is working in practice because the policy, the risk criteria and the data on its use have not been made publicly available and that is an important start for transparency and accountability.

Ms JENNY LEONG: It is quite surprising when we do these kinds of inquiries, but a significant amount of what we have heard has been really positive about the programs that are being rolled out in an area that seems to have broad support in relation to diversionary programs for young people so they do not connect with the criminal justice system. It seems like we are hearing concerns around the Suspect Target Management Plan being in contradiction to that in some ways or potentially not being in line with the same policy. Are you aware of any consultation or input that the Justice arm of the New South Wales Government would have had

around the development of this plan or any requirements for it to take on board or adhere to any of the policies and principles for youth diversionary programs that are coming out of Justice?

Dr SENTAS: First, the STMP is largely in contradiction to the wonderful policies that New South Wales police already have around youth justice, the Aboriginal Strategic Direction and their approach to the Young Offenders Act. So already in relation to New South Wales Police policy there are clear contradictions. My understanding of how the STMP developed is that it was developed through New South Wales Police and certainly the Department of Justice was aware of it. The nature and extent of their advice in the development of the policy I am not aware of, but I do understand that there has been no evaluation by the Department of Justice of the STMP as far as I am aware.

Ms JENNY LEONG: One of the things we have identified and heard about in submissions is the absence of data and information in certain of these areas around what we know and do not know and what is having an impact across a range of areas. We are hearing from many people about the need for an holistic approach. Maybe that is something we can look at in our recommendations to ensure that one program does not undermine another. Because it was raised in the Legal Aid submission, can you clarify whether it is possible to be on a Suspect Target Management Plan as a young person if you have never been found guilty of a crime?

Dr SENTAS: Certainly we have found that in our case studies—making the distinction between having been charged with an offence and being convicted of an offence. There certainly have been young people who may have had one single charge, and then not gone on to criminal proceedings, who have been placed on the STMP. I note that Commissioner Fuller from the NSW Police Force confirmed that there was a nine-year-old placed on the STMP and because of the principle of doli incapax that person could not have been found guilty of an offence. So certainly there is confirmation from New South Wales Police. Also routinely young people are placed on the STMP for breach of bail condition, so being aware that being on bail one has not been found guilty of an offence. These are also first-time offenders as well. We cannot say from our qualitative research that this would not be the majority of people on the STMP but the majority of people on the STMP are predominantly committing minor offences—public order offences, larceny, graffiti, transport infringements like riding without a ticket.

Ms JENNY LEONG: Do you have an indication of what proportion of those young people on the STMP are Aboriginal and Torres Strait Islanders?

Dr SENTAS: Our research indicated that around 50 per cent or 52 per cent overall were Aboriginal and Torres Strait Islanders.

Ms JENNY LEONG: Is that of the young people or overall?

Dr SENTAS: Overall. Commissioner Fuller confirmed that close to 56 per cent of all people placed on the STMP, both adults and young people, are Aboriginal. That figure is indicative of how many children on the STMP are Aboriginal, so it is clearly quite disproportionate to population.

Ms JENNY LEONG: Can you expand on the Public Interest Advocacy Centre's recommendation on proactive policing targets?

Ms DAWSON: We have similar comments on the STMP as we would around proactive policing targets. As our submission notes, there is not a lot of publicly available evidence about particular targets that police are setting but we do have some evidence that proactive policing involves setting targets, for example, for a certain amount of bail checks, a certain amount of stops and searches, and that kind of thing. Our concern I suppose in relation to youth diversion is that when there is an emphasis on meeting targets then the emphasis is on those numbers, rather than necessarily forming the requisite state of mind that is needed to carry out those powers such as stop and search. Again, in a similar way to the STMP, contact can seem frequent and arbitrary if that is something that is being pursued over and above the requisite state of mind.

Ms STEPH COOKE: Should young people be able to nominate multiple addresses for the purpose of bail residence requirements?

Ms DAWSON: We are not criminal lawyers so we are not dealing with it at that end, but certainly in the breach of bail we see it is most commonly for our young Aboriginal and Torres Strait Islander clients because of a breach of curfew and often because of residence requirements. I am aware of that recommendation and I think it is very sensible.

Ms STEPH COOKE: The Public Interest Advocacy Centre supports increasing the age of criminal responsibility from 10 years to 12 years. Given that there have been cases of extremely serious offending by children under the age of 12 years, how do your recommendations sit with other considerations like community safety and the prevention of vigilante activity in such cases?

Ms DAWSON: I understand that concern and it is something that would have to be seriously considered if the age of criminal responsibility was raised. I do not have the answer right now but I know that in other jurisdictions where they also have an age of criminal responsibility of 12 years of age there are ways to deal with children who have committed otherwise serious crimes. Sometimes they are carved out, they are like an exception, but otherwise the emphasis is on diversion.

The CHAIR: Thank you both for appearing before the Committee. The Committee may wish to send you some additional questions in writing. Your reply to those questions will form part of your evidence and be made public. Would you be happy to provide a written response in five business days to any further questions.

Ms DAWSON: Yes.

Dr SENTAS: Yes.

(The witnesses withdrew)

TRACEY McLEOD HOWE, Chief Executive Officer, New South Wales Council of Social Service, affirmed and examined

The CHAIR: I welcome Tracey Howe, Chief Executive Officer, New South Wales Council of Social Service, to this inquiry. Before we proceed do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Ms McCLEOD HOWE: No.

The CHAIR: Would you like to make a brief opening statement before we proceed with questions?

Ms McCLEOD HOWE: Thank you to the Committee for the opportunity to appear today and for its very important inquiry into the adequacy of youth diversionary programs in New South Wales. The submission of the New South Wales Council of Social Service [NCOSS] endorsed the specialist members that we have: Mission Australia, Youth Action, Aboriginal Legal Service (NSW/ACT) and Just Reinvest NSW. As I said, they are the experts in these matters. We reinforced a number of points raised by these organisations and NCOSS members and we also raised our core pre-budget submission asks to the Government around building a fairer justice system, particularly looking at Aboriginal communities because of the impacts on them particularly.

As the Committee would know, 57 per cent of Aboriginal people in Australian prisons have been there before, so certainly that is our area of interest. It is a pretty dismal outcome that so many of these offences are for breaches of custodial or community-based orders and traffic offences. There really is a need for culturally appropriate diversionary and post-release programs, which I am sure the Committee has heard today already. Last year and this year the NSW Council of Social Service travelled across the State and heard directly from services and communities that Aboriginal communities have limited access to legal assistance and community support programs that recognise a complexity of needs, which includes culture, kinship and trauma. Importantly we heard that diversion options are not available across the board in New South Wales, particularly when you go regionally and remote.

The key asks in NCOSS's pre-budget submission for the forthcoming budget in 2018 are as follows. There should be additional investment over four years in community-based Aboriginal legal assistance services. We should commit $4 million over four years to reduce young Aboriginal people's contact with the criminal justice system. We should sustain support for diversionary programs across the State basically, specifically looking at regional and rural communities needs where there is an urgent need and it is immediate. We should invest $15.6 million over four years in culturally appropriate post-release programs focusing on continuity of support to re-establish connection to community and reduce reoffending which is where we see the real change occur where you can really break that cycle.

We have some key messages for the Committee. In short they are: consistent offering of diversion by police and courts across New South Wales; expanding the Youth Koori Court as detention should be the last resort for young people; safe and appropriate accommodation for children on bail; a coordinated support system for young people on correction orders and, in relation to tackling recidivism, culturally appropriate post-release programs for Aboriginal young people is where success can really be found. In the area of justice reinvestment I am sure the Committee has already heard that that seems to be something that is working well in a culturally appropriate context making real change. Also investing in workforce development for Juvenile Justice staff would be something that is key so that the people working on the ground with these young people have the skills to manage it. Thank you.

The CHAIR: Legal Aid NSW has told the Committee that a scheme such as Youth on Track, which relies on referrals from police officers, may struggle to engage Aboriginal young people. You have touched on that. Do you have any further comments?

Ms McCLEOD HOWE: We travel around the State as I said and we see that police referrals are not an impediment across the board. But I think what the Committee needs to take into account is that there needs to be a sense of community engagement—some reference to the community itself and some choice around how that occurs. There is no impediment to police doing this work but you need to be connected at the community level or you will not get through. It is long-gain work but it can happen.

The CHAIR: Some young people decline to participate in diversionary programs. Does NCOSS think attending diversionary programs or services should be mandatory?

Ms McCLEOD HOWE: I suppose the stick does not tend to work, particularly with young people. We need to look at the root cause of what is happening for those young people and that would also include the

community and community perceptions. I suppose we are looking specifically at Aboriginal communities in relation to our commission. What we would say is if you can get the community on board you will be able to reach those young people. Go to the mentors in those communities. There are programs that already exist that are led by Aboriginal elders in the community and people of standing, such as One Vision Productions in Lismore. What they will do is connect with young people to intervene before anything even happens and they have great outcomes under the guise of hip-hop. But it is about links to learning and preventing the crimes happening in the first place. We need to make sure that the communities are involved. We use the elders and those experts on the ground in the community in order to make it not a stick but something that will be supportive of you and recognise your culture.

Ms JENNY LEONG: Thank you for your opening remarks. In your submission you reinforce some key points. One is something that the Committee has heard before; that is, the consistency with which these policies and approaches are delivered across different police local area commands. Given the scope of the role of NCOSS, can you tell the Committee what changes could be made, whether to legislation or policy, to try to ensure a more consistent approach across local area commands? The Committee has heard there are good and very challenging examples. Do you have suggestions as to what the Committee might recommend to address that inconsistency?

Ms McCLEOD HOWE: Certainly where you see good practice occur it is often more about champions within the policing community as opposed to a policy imperative. What I would really encourage is cultural competency within the NSW Police Force in particular. We see, as you said, examples where work is done in collaboration between the community and the police. In fact, they are part of the discussion as opposed to being separate to the discussion. Cultural competency is huge. It would be important to reward those wins. In these kinds of inquiries you hear piecemeal about where good work is occurring but is there a mapping of that and some kind of reward in the police service where things are being led? I suppose change is being made in communities because the police are embedded within and are letting those communities have power for themselves. I think there needs to be some way of not just saying that this is an aberration because there is a champion police officer there but also that this is the way we work. We embed ourselves in community and we want to be part of it.

Ms JENNY LEONG: As a follow up to that, one of the suggestions made this morning by Judge Peter Johnstone of the Children's Court was to ensure that there were full-time youth liaison officers in each of the local area commands. Is that something of which you would be supportive?

Ms McCLEOD HOWE: Absolutely. It is not just youth liaison officers; you need to build networks. Those relationships are key, from youth liaison officers right out to communities overall because there are different relationships in Aboriginal communities for different issues. You might need to tap into a variety of experts in the community, being members of the community, in order to be part of the solution. It cannot just be that one person's role. What we do see happen is that sometimes a person is anointed with a role like that, or it might be where there is no youth liaison officer a particular elder in community has charge of all that weight. It is about creating some kind of sustainable network that is embedded in policy not just by chance.

Ms JENNY LEONG: You highlight the need for a range of safe accommodation and the impact of housing. The Committee has heard of situations and seen in other submissions that young people are being detained because there is no appropriate accommodation for them. We are also aware that the lack of secure housing impacts on young people who connect with the criminal justice system in the first place. Could you talk a little more about that and about what recommendations the Committee should make?

Ms McCLEOD HOWE: It is a perverse outcome that you cannot be granted bail because there is nowhere to put you. There needs to be investment in wraparound support services because it is not just accommodation that is an issue for young people; it is often a combination of trauma, mental health, drugs and alcohol. There might even be a history of sexual abuse. There are a variety of issues that need support. We need wraparound services for young people who are supported to connect to community in a culturally appropriate way. We refer in particular to Aboriginal-led services getting advice from organisations on the ground who are run by Aboriginal communities that wrap themselves around young people and support them. In the long run you have more chance of breaking the cycle than keeping them incarcerated, as the Committee would know from evidence today I am sure.

Ms JENNY LEONG: A number of submissions state that many of your members are dealing with what is often competitive or short-term funding. Funding that is delivered for a certain program might not allow the flexibility that is needed. Could you talk a little more about that?

Ms McCLEOD HOWE: Absolutely. It is the tyranny of a procurement process that so often it gets bound up in a contract that is very specific and does not allow for any innovation or flexibility that really looks

to outcomes for people in the community. What we have said at the NSW Council of Social Service [NCOSS], through the Social Innovation Council particularly, is that we should have outcomes-based contracts. We should have contracts with incentives that deliver outcomes for people rather than widgets; that what you have is the opportunity to be incentivised and perhaps have your contract for a longer time. Then there is a level of security in the service provider to make some long-term decisions and to take some risk. "Risk" is probably too harsh a word; we should be flexible to the needs of specific young people in order that they do not feel that the weight of their funding agency has come down upon them.

Certainly NCOSS and our members are very much of the view that there needs to be much less of a tight rope around the funding in order for us to do some good work. I think what we often hear is there needs to be more innovation. We should not be so prescriptive and we box in the policies and procedures around the services we provide. You have touched on it. This is often because of the tyranny of the contract. We would say certainly some level of flexibility is needed to demonstrate we can do some new things to create change.

Ms JENNY LEONG: This question relates to what we have heard from the Children's Court. We are also hearing consistently that there needs to be an holistic approach. You referred to it as a wraparound approach. In the conversation we had with young people when we were in the juvenile centres, many times the reason why they were there or the challenges when they got out had very little to do with anything concerning the criminal justice system.

Ms McCLEOD HOWE: Absolutely.

Ms JENNY LEONG: From your perspective in that holistic approach, what would you identify as the largest obstacle at the moment or the area that needs the attention of this Committee that may go outside the scope of the Juvenile Justice system?

Ms McCLEOD HOWE: It is housing, certainly—accommodation. There is also the connection to community when we are talking about Aboriginal young people. There is a sense that their culture is not something that is honoured and that they are part of a system that has nothing to do with their community. The concept of providing more power to small communities to drive their own solutions seems to make a huge difference when you look at the Justice reinvestment model. What you are seeing is people can do it for themselves. In fact you get the results when you go straight to those experts on the ground. We would say certainly try to set off as many of those little bushfires as you can in communities so that those people can come up with solutions.

The other thing is that there is community nuance that is appropriate also. It is not a top-down approach. It would be folly to listen to the evidence, I would say, from anyone coming here today and think that there is a top-down fix or approach, particularly in communities that that are rural and regional and where there are active Aboriginal communities. You need to ask them. It will look different in Bourke from what it does in Mount Druitt.

Mr EDMOND ATALLA: We have heard that there is a lack of diversionary programs in regional areas. Can you comment on that and, if so, what should be done to address this?

Ms McCLEOD HOWE: It is terrible that it does often just come down to financial investment. If you take the long game and look long term at outcomes across all government agencies, there are savings to be made if you invest in diversionary programs. That would be what we would say to this Committee: look at the long game for this up-front payment to ensure there is access across the State because it is an equity issue. You should not have to be a young Aboriginal person in Broken Hill who does not have the same choices as someone who is in Sydney. That is unfair in New South Wales. We are a very rich State so we should be investing up front in these diversionary programs. If it has to be about a fiscal imperative, certainly you can look at the data on the cost of recycling through the justice system—whatever the impacts are; drug and alcohol, broken families. All of this has a financial impact. Investing up front is going to be a saving in the long run.

Mr EDMOND ATALLA: Do you think it is just a fiscal issue or do you believe there are not sufficient trainers that could be sourced in regional areas?

Ms McCLEOD HOWE: It is that too.

Mr EDMOND ATALLA: So it is a combination?

Ms McCLEOD HOWE: Certainly. We hear that there is a combination. Nothing is simple, as you can imagine. We certainly hear that the staff who are trained to work in these areas are not always there when you go regionally and rurally. If you go out particularly to the Far West, it is hard to secure personnel to work on the ground. But certainly incentives could be provided in order to ensure that this happens: also, again, building the

capacity of those communities who have the expertise within to be part of this solution, or to be the solution. It is not just financial, no.

Mr EDMOND ATALLA: Do you believe that the success of the programs, particularly in regional areas where there are high Indigenous clusters, would be more successful if the trainers are from an Indigenous background?

Ms McCLEOD HOWE: Absolutely. Certainly what we see when we are going to Aboriginal communities is that the biggest successes are when anything is led by the Aboriginal community. Even when we look at really early intervention at the early childhood education centre part—you know, this is when we have little kids—those services that are run by the community actually wrap around whole families. If you look at early childhood centres that are Aboriginal run and led, they are stopping justice impacts there because they work with whole families to keep kids in the family and to ensure that the family is safe and not resorting to some kind of offence. There are places all through the system where there are early interventions occurring and they are not just justice interventions.

Ms JENNY LEONG: We have not had the issue of early childhood brought into this conversation, at least as far as I am aware. I wonder whether it is something you could take on notice to see whether the Committee could get some more examples of that?

Ms McCLEOD HOWE: Sure.

Ms JENNY LEONG: It is something that I think is key if you look at the correlation around learning outcomes and benefits of early childhood education and then the statistics at primary school level. It would be really great if your members or others could provide some more detail.

Ms McCLEOD HOWE: Certainly. What we see in those early childhood centres is not just the support for the child who is in the centre, but the connection of the family to that Aboriginal-led and run centre. That in itself can prevent anything occurring.

The CHAIR: I concur. I know the Member for Cootamundra has one in her electorate.

Ms STEPH COOKE: An Aboriginal childcare centre, yes.

Ms McCLEOD HOWE: They are amazing.

Ms STEPH COOKE: Yes. I concur with what you have said around the involvement of entire families in the work that they are doing with little ones and beyond in Cowra. We had a justice reinvestment pilot program in conjunction with the Australian National University [ANU] as well.

Mr EDMOND ATALLA: In relation to families, the Committee heard during its visit to the Juvenile Justice Community Office that there is a view that the diversionary program should engage families. We also heard the other side of the story where the families could be the cause of the problem in the first instance that caused the juvenile to do a criminal act. How do you strike a balance between involving the family and the family being the cause? How do you resolve that?

Ms McCLEOD HOWE: It is about allowing some level of power to sit with the young person and also to work with them to see what is the core cause, but also making sure that it is not just about connection to family, which is important, and having systems or programs in place that allow for mentors from community who can also engage and support. An Aboriginal young person is very likely to engage with a mentor who is an Aboriginal person. Again, it is not a one size fits all, as you say: different strokes for different folks. It depends what that young person needs. But a level of giving them some power and choice by saying, "These are the types of options that we have to support you to go out and not come through this system again."

Mr EDMOND ATALLA: Who should make that decision whether or not to involve the family?

Ms McCLEOD HOWE: It depends on the age of the child, but certainly you would need some level of government assessment about that. I do not think you can start saying that people cannot see their families. I cannot see any situation where that would occur, but it is about giving options. That connection to that family is a value judgement, that the family is impacting them. That is a pretty strong statement to make—to then separate that young person from family—but it is about giving them options and choice. There may be a sense that that is not helpful, whatever is happening at home. Certainly they should be given some other contact or connection with the Aboriginal community for support. I cannot imagine any way it would be appropriate to ban a young person from being with their family.

Mr EDMOND ATALLA: Even if it is the person's choice?

Ms McCLEOD HOWE: Then it is the person's choice.

Mr EDMOND ATALLA: If at the age of 10 they said, "I do not want to go back to my family", are they going to be told, "No, you are too young to make that decision"?

Ms McCLEOD HOWE: If you are talking about a child who is 10, I imagine Family and Community Services would have a lot of interest in a child who says that they do not want to go home to their family. It is certainly not something that NCOSS can turn its mind to—the specifics of children who may be at risk. That is not something we cast our mind to. We cast our mind to equity of access and choice. That there is more than one choice for a young person is the main thing, and equal access. I could not say that about the 10-year-old scenario.

Mr EDMOND ATALLA: The reason I raise this is that we heard from one of the juvenile offenders that the family was the cause of her being in Juvenile Justice. She did not want to go back to that family environment and the friends who caused that. She said, "They are not giving me an option. When I am released from here they are going to put me back with the family".

Ms McCLEOD HOWE: That is where a level of choice is appropriate. It is important to hear the stories of those people who are directly impacted by those systems. The jump to, "We somehow have to cut the family out" is not one I could make in relation to one person's story. That has a lot of value in the context of what impacts someone in the Juvenile Justice system.

The CHAIR: In July we are taking the Committee and Hansard out to Reiby to interview some detainees.

Ms McCLEOD HOWE: Fantastic.

The CHAIR: It has not been attempted before to the best of our knowledge. Committee members were deeply touched by some of the stories that the detainees were telling us. We believe that if we to have an all encompassing report we need evidence or information from all sides.

Ms McCLEOD HOWE: Absolutely. One of the things that NCOSS has changed in its approach to its work in the past two years is to be connected at the community level to hear what is happening on the ground. That is where we see those early childhood centres, or we see One Vision Productions. There was another one—the Indigenous Justice Program, Regional Youth Support Services at Gosford. Have you heard of that one?

Ms JENNY LEONG: That has not been mentioned so far.

Ms McCLEOD HOWE: That is an example of a program. Intensive casework for young Aboriginal men and women in contact or at risk of being in contact with the justice system. That is Aboriginal led. There are amazing things happening on the ground. We cannot sit in Sydney using desktop audits. It is fabulous.

Ms STEPH COOKE: You have called for the expansion of the Youth Koori Court into other areas, particularly regional areas. What prompted you to make that recommendation?

Ms McCLEOD HOWE: We listened to our members who are Aboriginal members. What we have heard from ALS is that it is something that works. Based on its recommendation we have endorsed it. It is not based on deep research from NCOSS; it is based on supporting a member service that has the expertise and knowledge of its own community.

Ms JENNY LEONG: We are going to visit that, for the record.

Ms McCLEOD HOWE: It is good. It is a much better way to run a committee, I would say.

Ms STEPH COOKE: The Committee has heard of a lack of drug rehabilitation services for children and young people, particularly in regional areas.

Ms McCLEOD HOWE: Yes.

Ms STEPH COOKE: What comments would you have about that statement?

Ms McCLEOD HOWE: We would say that and dovetail it with mental health support. What we are seeing is that when there is a lack of mental health support in communities we have people being incarcerated, not just young people but also Aboriginal people when it could have been dealt with through mental health liaison. That is something we see going around the regional and rural areas from the far west, in the south and up in the north. It is consistent.

The CHAIR: The Committee has heard from others that competitive short-term funding can undermine much needed collaboration between services as they compete for resources and clients. Do you think funding for services should be longer term?

Ms McCLEOD HOWE: Absolutely. What you do see as well is that because the Government does not work jointly you have different services providing different support services. They are being impacted by reform agenda or procurement for, say, Family Community Services, justice, or NSW Health. That is not joined up and you have this disjunct between those parties who should be working together in order to do the best they can for the young people in the community. It is hard on the ground in the competitive tendering environment. It is difficult to make long-term plans if you have a two-year contract. By year two what you are doing with the small bucket of funding is you are looking up the road to your competitor and you have your eye on the tender process as opposed to being able to focus wholly on being innovative and delivering on the ground. It is prescriptive. There is not enough leeway to do things in an innovative way and to respond to an idea that an Aboriginal community might come up with itself.

The CHAIR: I am seeing that with the National Disability Insurance Scheme [NDIS].

Ms McCLEOD HOWE: Yes.

The CHAIR: It is a changing and confusing landscape.

Ms McCLEOD HOWE: Yes. There is a time of change across the social services sector at the moment. The NDIS is a great case in point. If you couple that with the fact that we have reform across many agencies in government it makes it a very hard tie-in to be running a small service in the community. The other thing that is important to remember, particularly for Aboriginal communities, is that there is a fly-in fly-out approach that often happens. You have communities who are not accessing the services that are funded because they come on a Wednesday afternoon to do grief counselling—well, I do not need it on a Wednesday afternoon. There is that idea that we spend money that on paper looks like it delivers something but what is the outcome? Are we measuring whether it is getting to the people on the ground? I go to Wilcannia and I know that thousands of dollars are spent on paper on each member of that community, but there is not a great deal of evidence of that if you visit Wilcannia.

Ms JENNY LEONG: One other issue was mentioned around the idea of regional coordination. You touched on it. It was made in the context of the Children's Court and its experience from going to certain areas. But that did not extend across the whole of New South Wales. What are your thoughts on how a regional coordination model might work across government services, focused on diversionary programs and supporting young people?

Ms McCLEOD HOWE: The main thing is rather than have it based around diversionary programs, housing or domestic and family violence, the issue should be about healthy communities. It is the hub and spoke thing about all of the aspects that feed into it, including diversionary programs, housing, homelessness supports and early childhood education, and it is about what that community needs. How do we make that a healthy community? That will require cross-agency collaboration. That will require the police not just having a lens on their police powers but also knowing that a healthy community will stop them from having to use their police powers. They should be involved in early childhood education in their community as a collaboration point because that will stop them having to go up the pointy end to arrest a young person. That is a good way to do it. It is about the people and not the issue. You can have 10 agencies covering 10 different things but if it is not joined up it is a bit of a mess.

The CHAIR: Thank for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any further questions?

Ms McCLEOD HOWE: Yes.

The CHAIR: Thank you. I speak on behalf of the Committee when I say that we are thoroughly supportive of the great work that NCOSS does. We all have interaction with your members to varying degrees.

(The witness withdrew)

(Short adjournment)

MICHAEL HIGGINS, Regional Community Engagement Manager, Central and South Eastern Region, Aboriginal Legal Service (NSW/ACT), affirmed and examined

KEISHA HOPGOOD, Deputy Principal Solicitor, Redfern Office, Aboriginal Legal Service, affirmed and examined

The CHAIR: Welcome and thank you for appearing before the Committee today. Before we proceed do you have any questions regarding the procedural information sent to you in relation to witnesses and the hearing process?

Mr HIGGINS: No.

Ms HOPGOOD: No.

The CHAIR: Would you like to make a brief opening statement?

Mr HIGGINS: I would like to reiterate the covering letter from our submission. On behalf of the Aboriginal Legal Service we thank the Committee for the opportunity to provide a submission to the inquiry into the adequacy of youth diversion programs. The Aboriginal Legal Service [ALS] is the peak legal service provider to Aboriginal and Torres Strait Islander people in New South Wales and the Australian Capital Territory. We provide this submission based on our direct involvement with and representation of clients who interact with the justice system, many of whom are young people.

This submission is informed by discussions we have had at a series of statewide community forums held in November and December 2017 and a complementary survey of community members. The forums were informed by ALS staff and attended by community leaders and stakeholders. Input was sought on the issues raised in the terms of reference. The feedback received indicated the importance of community design and community-led solutions to divert young Aboriginal people in New South Wales from the criminal justice system. In particular, participants argued that the solution must involve Aboriginal young people ideally with a range of life experiences. Based on this feedback the Aboriginal Legal Service has provided a number of recommendations to the Committee relating to the terms of reference. We thank you again for the opportunity to answer any questions you may have about our submission.

The CHAIR: Ms Hopgood?

Ms HOPGOOD: I am fine with that, thank you.

The CHAIR: I will start the questioning. The Committee has heard that a greater range of offences should be able to be dealt with under the Young Offenders Act 1997 in appropriate cases. Do you have any comments about that?

Ms HOPGOOD: I certainly do. I feel very strongly that that would be of benefit for a number of reasons. First, it still allows a discretion and in the Young Offenders Act there are considerations that the police would have to apply in considering whether to utilise those provisions. For example, the restrictions at the moment do not always make sense; for example, the offence of intimidation, which is an offence that comes under the Crimes (Domestic and Personal Violence) Act. That offence cannot be dealt with under the Young Offenders Act. That may be a young person who has come from a very difficult background and may not have a lengthy history of offending, is in a group home placement and is under the care of the Minister but gets into an argument with another young person about a remote control, saying something that constitutes intimidation. That is a matter that would have to go to the court. The court could deal with it by way of a caution, not under the Young Offenders Act but in a diversionary way. However, it would still have to go through the court process.

Similarly, traffic matters committed by children of licensable age could be dealt with very appropriately by way of a youth justice conference, for example. A young person is then forced to look at the potential dangers in their driving behaviour, the potential consequences to the community and to themselves. A plan could be put in place that includes a traffic offenders course. Definitely that is another offence type that would more appropriately be dealt with under the Young Offenders Act. We saw a big change with the aggravated form of a break and enter offence. Again there is nothing to suggest that that would not flow through to other aggravated forms of break and enter offences.

I go back somewhat. It used to be the case for a long time that aggravated break and enter where the circumstances of aggravation were that a young person was in company could not be dealt with under the Young Offenders Act. Police would sometimes try to jump through hoops by saying, "We'll call it a straight break and enter. We will pretend that it wasn't in company", but of course if you were the solicitor giving advice

about that option and the interview that would have to take place where admissions had to be made, you would be wary of doing that and having a young person admit to something that when referred to a youth liaison officer or someone else they might say, "Hang on a minute. This does not come under the Young Offenders Act. It has got to go to court."

So you would have young people come into court for matters that again would have been very suitably dealt with under the Young Offenders Act but could not be. That legislation was changed and, as I indicated, that aggravated form now comes under the Young Offenders Act and the police often choose to deal with that offence in that way. That is another area of offences where this restriction is somewhat nonsensical, if I can put it that way. There would certainly be a benefit if those offences could be dealt with under the Young Offenders Act while still allowing discretion to police for really serious matters to be referred to court, and the same with graffiti matters. Before the Graffiti Control Act came in, graffiti offences were dealt with by way of an offence called destroy or damage property. They came under the Crimes Act and could be dealt with by way of a caution or a conference.

Again it makes sense particularly for a young person without a long history of offending but who has got in trouble for graffitiing the bus stop on the way home or whatever to be dealt with in that way. When the Graffiti Control Act was introduced and graffiti offences came under that, for a while the police were willing to still call graffiti offences destroy and damage property offences. Some time ago I believe they were given a direction not to do that so all those graffiti offences now have to come before the court. That is another clear example of a group of offences that could definitely be suitably dealt with under the Young Offenders Act.

The CHAIR: We heard that sometimes young people breach their bail conditions by travelling on public transport without a ticket or things like that. They are trying to improve themselves but they have been caught up in the system.

Ms HOPGOOD: That is right.

The CHAIR: A young person must admit an offence before police can issue him or her with a caution under the Young Offenders Act. Some stakeholders argue that this requirement stops some young offenders from being diverted from the criminal justice system. Should this threshold be lowered?

Ms HOPGOOD: Do you mean an admission to lower it in an acceptance of the facts as opposed to an admission?

The CHAIR: Yes.

Ms HOPGOOD: It would certainly make sense, particularly with those protections in place of the police discretion as to what kinds of matters to deal with. An example would be where a young person agrees with 85 per cent of what is put to them and not the other 15 per cent. That is not a matter that should go to court; it is not in anyone's interest for that to go through the court system. Indeed, if a fact sheet was prepared and there were facts in there that the young person did not agree with, and they were significant, you would have to go to a disputed facts hearing. If they were not, you might just put on the record that they were contentious, but if it was not going to change the sentencing outcome, it would be left at that. Similarly, if a young person did not have to admit to all those offences, if they could either admit to the elements of the offence or accept the version that was put to them, that would certainly have benefits in certain circumstances.

Ms JENNY LEONG: One thing that has come up relates to the Suspect Target Management Plan. Do you have any comments about that? A number of submissions have raised concerns about that. Evidence from the last witnesses was that it seemed in contradiction to other police programs being used such as Youth on Track. Can you comment on that?

Ms HOPGOOD: I completely agree with that submission. It is absolutely contrary to diversionary options such as Youth on Track and other programs and is counterproductive. A lot of good work is being done by police in communities at repairing relationships that historically have not been good, and that is completely being undermined by that program where people do feel that they are unfairly targeted and in my experience are unfairly targeted. Certainly I think it is counterproductive. Further—and I will not repeat all those submissions that I am sure you have heard—I have read the report that has been referred to and I agree with the contents of that. It also does sometimes escalate an offence; it creates offences. Young persons who would not otherwise be brought into the system come into it. Again, I am sure you have heard that the entire family is impacted; they go into the house. It has a massive impact and it does seem contrary to all the other ways that the police and the Government are trying to tackle youth crime.

Ms JENNY LEONG: A suggestion from the Bar Association was about the need to look at how programs for Aboriginal girls and young women should be consulted on and considered in relation to how the

content is delivered. The Committee has visited a number of Juvenile Justice centres. There was a feeling in one of the facilities that young women and girls are treated very differently because they are smaller in number and the programs, supports and facilities are not necessarily developed with their involvement. I wonder whether you have any recommendations on how that might be addressed, given that they make up a very small number of the cohort in the Juvenile Justice system?

Ms HOPGOOD: I would appreciate being able to take that question on notice. It is a very interesting issue. It is not something to which I have specifically turned my mind.

Ms JENNY LEONG: If you think of examples of things that could be done to address it that would be useful. Just to note, in a certain regional centre there is one room in a very closely watched area. If you are a young girl detained in that place you go there and the young boys are given the entire rest of the centre. The young women that are detained are having to go to Reiby whereas the others are located potentially closer to family and community. It would be great to get any information you have on that.

Ms HOPGOOD: Certainly.

Ms JENNY LEONG: Legal Aid has raised a concern that the Custody Notification Service is in relation to custody situations, but my understanding from memory is there is basically a situation where the Custody Notification Service will no longer be available where a young person is not in police custody. There has been an ability for that kind of connection in the past. I wonder whether you can talk about how that process works in relation to custody notification, whether or not there is any support for expanding that and what is the value of that service.

Ms HOPGOOD: The Custody Notification Service, as you pointed out, is a custody notification service and that is what the funding is for. It is a service that is very important and it is a service that we staff. Some of the shifts are phone call after phone call. In an ideal world, the Custody Notification Service would deal with young persons who are not in custody but who the police are wanting to deal with under the Young Offenders Act. We did look at that. I came from Legal Aid and I have been on the Legal Aid hotline service for a long time. What we decided was most important was trying to get a definitive statement. On some occasions the solicitors on duty had time to take those calls and on others they did not. If they did, then a person that was in custody and perhaps very vulnerable missed out on getting that call or the solicitor got to that call late, and the consequences of that are very real and very serious. We looked at what that could mean. The concern was that if it was that kind of grey area and done on a solicitor basis and a shift basis and a discretionary basis there would be people that fell through the cracks.

I spoke within ALS but then I also spoke to Legal Aid and explained that we just had to confine the calls we took on the Custody Notification Service by definition to those who were in custody. We had to communicate with police that those young persons still had a right to call the Youth Hotline, so there was a service provided for them and that was the absolute approach they should take so that young people did not fall through the cracks by police not knowing who to call and, secondly, other vulnerable people in custody did not fall through the cracks.

Ms JENNY LEONG: Do you believe that having the Youth Hotline as opposed to a specific Aboriginal-focused hotline would assist in diversionary programs? Is it something the Committee should look at, or do you think that provided there is a number to call it is meeting that need?

Ms HOPGOOD: No, the Aboriginal Legal Service will take all calls from young persons that are in custody. The Youth Hotline is a very necessary service. It is an extremely necessary service across the board for all young people in custody. As I said, in an ideal world a service with the training that Aboriginal Legal Service solicitors get as to cultural issues that are raised and the R U OK? part that goes with the Custody Notification Service with ALS would definitely be my first port of call if the ALS could provide that service to all Aboriginal and Torres Strait Islander young persons. But we would have to have two solicitors per shift and there just is not the resources to do that at the moment. In an ideal world, calls from State-based non-Aboriginal young persons would go to the Legal Aid Youth Hotline. All calls involving Aboriginal young persons—be they in custody or otherwise—would come to the Custody Notification Service and be dealt with by an Aboriginal Legal Service solicitor but, again, we just do not have the resources at the moment.

Ms JENNY LEONG: You have made a recommendation that this Committee examine the recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory in relation to the recommendations that we may consider making. Do you want to speak as to which key recommendations you think would be relevant to New South Wales? I am happy if you want to take it on notice, but I think it would be really good to get on the record the lessons that can be taken out of that Royal Commission.

Ms HOPGOOD: We can take that on notice because I think it deserves a comprehensive response. Maybe not specifically from the findings, but a few things that really came up for me in the recommendations was the training to all judicial officers and all staff dealing with these programs of cultural competency and trauma-informed counselling. That is very important. The difference in the staff is what makes a massive difference to the quality of the program. There are some wonderful programs out there but they are only as good as their staff. It would be good if all those programs had with them cultural competency training—and that is for judicial officers as well—as well as training around what those diversionary options are aimed at.

I think a few of the submissions have referred to the underutilisation of the Young Offenders Act in the court. That again is because some judicial officers perhaps have a misunderstanding, or not a full understanding, as to the purposes of that legislation. They may see a youth justice conference as a soft option or as a young person getting away with something. It is not. If anyone has been to a conference they would know it is an incredibly challenging process and its goals are admirable. If there was some training around that I think you would see that being utilised in a much better way.

If I can briefly give you an example of an offence that you would think at first glance was a very serious offence, the offence of reckless wound was an example I dealt with very early on, a number of years ago, where some young persons had been at court that day and they put syringes on seats at one of the courts. Really stupid, and really terrifying behaviour for one of the practitioners that sat on that seat. They were not used syringes. They were not thinking about it in any other way than a 13-year-old who puts a whoopee cushion on a chair. The initial view would be to look at that and say, "Way too serious. That's a matter that has got to be dealt with severely."

The conference is how the court did ultimately deal with it and it was completely appropriate in that a young person whose capacity for consequential thinking was still developing could sit down in a forum and talk about what happened. The victim had an opportunity to talk about the impact on him. Even though they were not used syringes, as I said, there was still trauma that went with that. That is an example where with appropriate training a specialist children's magistrate can say, "This is absolutely an appropriate case to be dealt with in that way", whereas another magistrate without that understanding might say, "I'm not doing that. This is way too serious."

Mr HIGGINS: One of the key points that we pulled out from the Royal Commission recommendations and something that we have found through our consultation is the need for Aboriginal people controlling or at least being involved in the design and delivery of programs that are targeted towards them. We also know that by involving people in programs that affect them they are more likely to engage and more likely to be successful. Some of our consultations talked about having Aboriginal organisations running and delivering that. We know that there are not Aboriginal organisations all over the State, so it is about identifying what organisations locally have the confidence in the community, have the confidence in the sector and are working well. Sometimes they are not funded very well. Sometimes they are not funded at all. It is about identifying which organisations are working well with community, and which ones need resourcing or a bit more support. Essentially what we have been finding is that it comes back not only to who is running it but also to the type of people who are organising—the skill base, the life experiences of people. It is about having young people involved in the program as well, not just as an end user but as part of the design and delivery of the program. It is really critical.

Ms JENNY LEONG: Thank you for pointing that out. It is powerful to see your submission, the way you have consulted and the amount of people who feed into what is being presented.

Mr HIGGINS: We also support the Just Reinvest NSW approach around prevention and an early intervention investment approach to diverting funds or resources from the criminal justice system back into social justice or back into community. We need to be building and strengthening communities and not necessarily building more prisons, which is not necessarily a long-term solution.

Mr EDMOND ATALLA: The Law Society of New South Wales commented in its submission that some magistrates hesitate to refer young offenders to diversionary programs because they do not believe it is appropriate or appropriately resourced. What is your comment on that?

Ms HOPGOOD: One would be a lack of understanding of the purpose of the Young Offenders Act, in that it is evidence-based as to what works. They might just look at it simply as a young person getting a soft option. I have heard magistrates refer to it as a soft option and I would invite the Committee members or magistrates to attend the conference. It is quite intensive—

Mr EDMOND ATALLA: What has been done to get those magistrates on board?

Ms HOPGOOD: A lot of the specialist magistrates are on board. I think the problem is more in regional areas where they do not have specialist magistrates. I would strongly support the retention of the specialist magistrates that we do have. If there is the capacity to increase the number of those or those servicing the regional areas it would have a huge impact. I think it is a lack of understanding and then a particular view that it is seen as soft.

Mr EDMOND ATALLA: If a magistrate does not refer someone to a diversionary program can any other intervention refer that person?

Ms HOPGOOD: Once it has gone to the magistrate that magistrate has the sentencing discretion. The solicitor can make submissions and Juvenile Justice can make recommendations—not recommendations as such but they will note in the report prepared for the court as to whether the offence is capable of being dealt with under the Young Offenders Act and they will include that information. Once the court makes that determination, the court can still deal with young persons by way of a bond. But again there is a difference between a conference with the support interventions that come with a conference and a bond that has Juvenile Justice supervision. In coming to the Juvenile Justice office a young person with Juvenile Justice supervision is coming into contact with those who are more immersed in the system. Whilst there are a lot of benefits from supervision there is that disadvantage that you would not have through a conference in the same way.

Mr EDMOND ATALLA: The Committee has also heard that some of the diversionary programs are not culturally appropriate for Aboriginal people. What are your comments on how you would overcome that?

Mr HIGGINS: We have certainly found through our consultation process, as I have just mentioned, that ideally it would be great to have our programs with that cultural lens making sure that all cultures and not just Aboriginal people who are going through these programs are considered and that their cultural background is taken into account. What we have found is that the spread of Aboriginal-controlled organisations or Aboriginal programs is very thin on the ground, particularly as you move west of the Blue Mountains. What we have also found is that really good non-Aboriginal providers are doing innovative, great and groundbreaking grassroots work with Aboriginal people. That is not necessarily about the organisation but it is about their approach to design, delivery and implementation of that program and how they involve Aboriginal people.

We have certainly found through our consultations that not just having Aboriginal people involved in the design, delivery and implementation has been shown to be successful, but it has also been a catalyst for change in other ways in the organisation. How do we do other things differently? How do we recruit Aboriginal people into our organisation? How do we make our organisation more welcoming not just at a programmatic level but also at an organisational level? We are starting to see some of that with some organisations but there is still a long way to go. The thing about having a culturally appropriate program is great, but it is about how you have appropriately skilled and experienced staff to deliver that program as well.

Mr EDMOND ATALLA: Some stakeholders have called for the return of the Youth Drug and Alcohol Court. Do you agree with that?

Ms HOPGOOD: We do. Any specialist court, particularly dealing with juveniles, that has a therapeutic basis in my view—and I might say the evidence is—has success in treating and seeking to reduce the causes of criminal activity. That is a worthy goal in reducing crime and is something you cannot test. In the reports that come out it is very difficult to assess in a qualitative sense the success of those programs. However, I always tell the story in regard to the success we had with one young person when we finally found the funds to have her teeth fixed. She had very bad teeth and she had a bad attitude towards everyone. She got into conflict with everyone at school, the police and the court. She did not look up, she did not engage. But the difference once she could look up and smile and was not embarrassed was phenomenal. She went on to graduate from our Youth Drug and Alcohol Court. I am not suggesting that was solely because of the dental work but it is amazing that a court that looks at the criminal activity as a catalyst for looking at the reasons behind it and offers support in a holistic way across the whole gamut of the reason behind it—education, employment, health, including mental health—is phenomenal.

Ms STEPH COOKE: Research shows that Aboriginal children and young people tend to come into conflict with the law at a younger average age than non-Aboriginal children. What is your view as to why that might be the case and is there a need for more research in this area?

Mr HIGGINS: That is a good question. There is certainly a need for greater research but what I think stems from it is a multi-generational distrust for government, particularly for police. We know that there have been historical reasons around a distrust between Aboriginal people and particularly police authority. It is generational—because of the overrepresentation of Aboriginal people in prison for many that life is very familiar, the story is very familiar. I think it comes back to having that community awareness, community

education, making sure that the working relationship between police and the Aboriginal community is positive and effective.

We know that police are proactively working with the Aboriginal community around addressing local crime issues and increasingly taking a more preventative and early intervention approach. We certainly know that the issue is multi-pronged. It is not just about a distrust; for Aboriginal people it is a system that has failed them for generations. It is about us as government and policy makers, decision-makers, saying that we want to see a genuine change in the overrepresentation particularly. We are also seeing what we call the "transition kids"—those kids who have gone into out-of-home care and foster care and who have been disconnected or removed from their family, disconnected from their culture. We know that the outcomes for all kids in out-of-home care are very poor—particularly residential care. We need to invest in ways that divert particularly Aboriginal young people away from the care system so that we can build strong, healthy and resilient kids that do not then, if you like, graduate to the Juvenile Justice and adult prison systems.

Ms STEPH COOKE: The Committee has heard that entry into the criminal justice system is sometimes viewed as a rite of passage by some Aboriginal communities. Will you comment on that? It seems extraordinary to me in some ways.

Mr HIGGINS: I can add to it. I think it comes back to what I was just talking about then—that generational impact, the generational perspective. For Aboriginal people particularly, police or FACS are not necessarily someone you will go to when in distress normally. It has to be really bad and only in dire circumstances. So it is about what happens in the meantime with that person, family or community: Where else are they going to seek that support? What else are they doing to alleviate those things? I guess for some families it is generational. They do not know much different to it. They cannot see the light at the end of the tunnel. But sometimes it takes that support for one or two people to break that cycle in that family to make all the difference to that community. That is a broad statement but I certainly echo that it would be the position and the feelings of Aboriginal people across New South Wales.

Ms HOPGOOD: On that point, the difference between traditional court and Youth Koori Court is that in traditional court where you might have a very well-meaning magistrate who seeks to, if I can put it this way, shame an Aboriginal kid into compliance, it is not going to work at all. There is often already a strong feeling of shame and distrust for that system and being made to feel lesser. By contrast, the Youth Koori Court often involves tears and feelings of disappointment that are conveyed but in a way that is about acknowledging what has happened and the impact on that community. It is done in a very different way and the young persons begin to trust the system—not instantly. The elder is sitting there with the magistrate. All the disapproval and the condemnation of the behaviour can be expressed but it is done in a very different way and in a way that the young persons are open to. It is not unusual to have one of the elders crying, a family member that has been tracked down crying, and the young person crying and even the magistrate even crying or teary on occasion. It is a very different environment.

The CHAIR: The Committee is booked to visit the Youth Koori Court.

Ms HOPGOOD: Wonderful. It is such a wonderful development if that can continue to be supported.

The CHAIR: The members of the Committee have been to the Wagga Wagga detention facility. We have also been to Dubbo and Reiby. In July we will probably set a precedent for any jurisdiction in Australia by taking Hansard to Reiby because, overall, speaking on behalf of the Committee, we believe the Indigenous and other young people there have a story to tell. I think the whole picture needs to be on the public record—with all the due care and diligence as well.

Ms HOPGOOD: That is wonderful.

Ms JENNY LEONG: Your submissions address many changes and recommendations. Given the widely recognised as unacceptable rate of Aboriginal young people in detention and in the Juvenile Justice system, do you have any immediate and non-controversial, if you like, suggestions for what could be amended to try to address some of things? What would you highlight as some of those key recommendations? Obviously there is a broad scope of views of Committee members but I think we all agree we would like to see a reduction in the number of Aboriginal and young people in detention. Are there some specific things you think could be changed almost immediately that would address some of the concerns?

Ms HOPGOOD: Something in an immediate sense in terms of legislation would be to have no restriction on the number of cautions and conferences that could be offered—that is a simple solution. Again there is that discretion there but it means if number four offence for shoplifting a can of coke cannot be dealt with but you remove that restriction and it can, that is a very immediate, easy solution, to my way of thinking. It is not so much immediate but, as I indicated before, I think the Youth Koori Court is a wonderful resource. If

that could be expanded, that will have great success. Training is a big issue—I have said that—but training of everyone from police in a cultural sense and also about the purposes of the legislation, as I indicated, as well as magistrates. I think people become immune to reading the words "disadvantaged", "dysfunction" or "vulnerability" but if the training occurred where the court and police officers understood what that actually entailed on a daily basis, it would inform their decision-making. If people understood when you talk about trauma that you are talking about generations, in many cases, of physical violence, domestic violence, drug abuse—what that actually means is fundamental.

The CHAIR: The Bar Association has complained that in sentencing young Aboriginal offenders to prison, pre-sentencing reports contain insufficient information about their backgrounds, including social, cultural and historical factors that relate to the offender and his or her community. Do you have any comment about that?

Ms HOPGOOD: I would support that submission 100 per cent. By pre-sentence reports, I think they mean background reports. In juvenile courts they are very extensive in comparison to what occurs by way of a pre-sentence report in the adult jurisdiction. However, in terms of including that cultural information and that background, they are lacking, and that comes through. There is a formula that is followed for the background report. I do not think that formula, and what Juvenile Justice officers are asked to include, is adequate to deal with all those issues. They will touch on things. I do not know if they have got the training—again we have talked about the fact that having more Aboriginal Juvenile Justice officers would also assist that process. I definitely support that submission. In terms of doing something about it, that would be training for existing staff, providing more Aboriginal staff, and changing the policy or the formula that all Juvenile Justice staff are given in writing their reports to include those specific issues you raised.

The CHAIR: The Committee has received evidence that there are gaps in the protections to limit the circumstances under which a child's criminal history can be disclosed. Do you have any comments about that?

Ms HOPGOOD: I will take that question on notice and look at it a bit more, but I will say there is ambiguity at present in the Young Offenders Act as to when a child's criminal history can be disclosed in the Children's Court and when it can be used in the Children's Court as evidence—for example, in terms of doli incapax, the young person's understanding. Yes, the legislation is somewhat ambiguous and we have had debate in court with prosecutors as to the correct meaning of the words. That is where we have got the protected admissions scheme which was to support any admissions the young person has made in custody not being able to be used against them at court. I will take that question further on notice, but that is a brief account.

The CHAIR: I thank Ms Hopgood and Mr Higgins for attending the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within five business days to any further questions?

Ms HOPGOOD: More than happy.

The CHAIR: Thank you for attending. The Committee has a high regard for your organisation and the fabulous job you do in the community.

(The witnesses withdrew)

PHILLIP BOULTEN, Barrister, NSW Bar Association, affirmed and examined

SARAH PRITCHARD, Barrister, NSW Bar Association, affirmed and examined

GABRIELLE BASHIR, Barrister, NSW Bar Association, sworn and examined

The CHAIR: Do any of you have questions about the procedural information sent to you relating to witnesses and the hearing process?

Ms BASHIR: No.

Mr BOULTEN: No.

Ms PRITCHARD: No.

The CHAIR: Would each of you like to make a brief opening statement before we begin questioning?

Mr BOULTEN: Ms Pritchard will make an opening statement.

Ms PRITCHARD: The NSW Bar Association welcomes the opportunity to appear before this Committee which is inquiring into the adequacy of youth diversionary programs in New South Wales. By resolution dated 8 June 2017 the council of the Bar Association established a joint working party on the overrepresentation of Indigenous people in the New South Wales criminal justice system consisting of members of the Bar's criminal law committee, human rights committee and Indigenous barristers strategy working party, as well as a number of external members, including a witness who appeared before the Committee this morning, the Hon. Peter Johnstone, President of the Children's Court; the Hon. Judge Stephen Norrish, QC, of the District Court of New South Wales; the Hon. Dina Yehia, SC, also of the District Court of New South Wales; Professor Megan Davis from the University of New South Wales; and Sarah Hopkins from Just Reinvest.

I co-chair with Mr Boulten the Bar's joint working party. I also chair the Bar's human rights committee and the human rights committee of the Law Council of Australia. Mr Boulten chairs the Indigenous issues committee of the Australian Bar Association and was also counsel for the North Australian Aboriginal Justice Agency before the Don Dale Royal Commission in the Northern Territory. Ms Bashir is also a member of the joint working party and co-chairs the national criminal law committee of the Law Council of Australia. The Bar's submission to the Committee was prepared by the joint working party but adopted by the Bar Council. As will be apparent to members of the Committee, the focus of the Bar's submission is upon the adequacy of diversionary programs in New South Wales and preventing juvenile offenders from having long-term involvement with the juvenile justice system, with particular regard to the overrepresentation of Aboriginal children and young people in the juvenile justice system of the State.

As will also be apparent from our submission we consider that much of the analysis of the 1991 Royal Commission into Aboriginal Deaths in Custody report, the 1997 Australian Law Reform Commission [ALRC] "Seen and Heard" report, the 2010 Strategic Review of the New South Wales Juvenile Justice System, and the June 2011 House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report "Doing Time-Time for Doing: Indigenous youth in the criminal justice system", continues to provide valuable insight into the structural problems confronting Aboriginal and Torres Strait Islander people in overcoming the intolerable economic and social disadvantage to which they are subjected, and the unacceptable levels of overrepresentation in the criminal and juvenile justice systems. In particular, the recent report of the 2017 Don Dale Royal Commission contains recommendations which in our submission, appropriately adapted, should be accepted by the New South Wales Government and implemented in the New South Wales juvenile justice system in engaging with and providing services to Aboriginal and Torres Strait Islander young people in this State.

It is of significance that since the Bar's submission was made to this Committee earlier this year the Australian Law Reform Commission has since had tabled its December 2017 final report "Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples". It is not the occasion to summarise the findings and recommendations of the ALRC in this latest report. However, we note in particular a number of recommendations which were the subject of submissions by the Bar Association to the ALRC and also the subject of submissions to this Committee, in particular recommendation 6.1 on sentencing and Aboriginality, the subject of a question to the previous witness by the Chair; 7.1 on community-based sentences; 10.2 and 10.3 on specialist courts; and 16.1 on criminal justice targets.

It is not the occasion to summarise our fairly detailed written submission to the Committee but we wish to emphasise a number of the central recommendations that we make to your inquiry. First, our strong support for the diversion of juvenile offenders away from the criminal justice system to community support services is

the optimal response to the problem of juvenile crime, and the minimal interventionist approach at every stage of dealing with young people who come to the attention of justice authorities, consistent with Australia's international obligations as identified in the written submission.

We note in particular the disturbing conclusion of the Don Dale Royal Commission that Aboriginal children and young people were consistently less likely to be granted diversion than their non-Aboriginal peers, and this notwithstanding evidence that the diversion of Aboriginal children and young people had generally been found to be effective in reducing recidivism; our strong support for an approach to diversion which considers the pathways available for Aboriginal and Torres Strait Islander women and girls; our strong support for justice reinvestment as a fiscal framework for better support for youth diversionary outcomes; our strong support for the Youth Koori Court operated by the Children's Court, which is the subject of—we assume, not having seen the transcript—Judge Johnstone's evidence this morning. We urge the Government to provide dedicated funding for the Youth Koori Court. As the Committee is aware, the Youth Koori Court is presently funded from the Courts' general budget. We consider such funding necessary to allow the expansion of the Court to service more communities and to support and divert as many youth as possible.

We otherwise support the recommendations of the Children's Court including adequate funding to enable the provision of youth justice conferencing in all areas of the State; funding to ensure the availability of drug and alcohol programs and family counselling services for children and young people in all areas of the State; the establishment and funding of a residential drug and alcohol service in Western Sydney; the provision to the Children's Court of a power similar to the secure welfare power or a power to refer a child in the criminal justice system to the care and protection system; and the creation of a combined care and crime jurisdiction in New South Wales, which recognises that children and young people in need of care and protection are often the same children and young people that commit offences, and which would address the crossover of children from care to crime.

Generally, as the Committee is aware, the New South Wales Bar Association has called for Gladue-style sentencing reports, and we suggest an amendment to the Children (Criminal Proceedings) Act 1987 to make it mandatory in the case of Aboriginal and Torres Strait Islander young people for a sentencing judge to be provided with a Gladue-style specialist report dealing with systemic and background factors. We note a similar recommendation by the Australian Law Reform Commission [ALRC] in its very recent report. We likewise support justice targets to be developed by the Council of Attorneys General for inclusion in the Council of Australian Government's [COAG] Closing the Gap strategy, noting that that is not presently a policy of either the Government or the Opposition in this State.

We suggest, as Don Dale recommended and as the President of the Children's Court recommends, that section 5 of the Children (Criminal Proceedings) Act 1987 (NSW) be amended to provide that the age of criminal responsibility is 12 years and that there be legislation enacted to provide that children under the age of 14 years may not be ordered to serve a time of detention other than where the child has been convicted of a serious and violent crime against a person, presents a serious risk to the community and the sentence is approved by the President of the Children's Court.

Finally, we recommend that the scope of the Young Offenders Act 1997 be broadened to provide a legislative framework for the diversion of young offenders in New South Wales through measures including the removal from the exclusions under the Act of certain offences that operate to prevent the diversion of children in appropriate cases, such as offences under the Crimes (Domestic and Personal Violence) Act 2007, and less serious sexual offences under sections 61L, 61N and 66C of the Crimes Act 1900; removing the restriction under section 20 (7) of the Act on the number of cautions that a child can be given—noting the answer of the previous witness to the Chair's question in that regard; and replacing the requirement in sections 19B and 36B that in order for police to issue a formal police caution or utilise a youth justice conference that a child admit to committing to an offence with a requirement that the child does not deny the effects, in accordance with the recommendations of the Don Dale Royal Commission.

The CHAIR: Mission Australia told the Committee that there were opportunities to improve a youth justice conference process, citing limited referral options for programs and limited opportunities for young people to address their criminogenic needs. Do you have any comments on that? I know you have covered quite a few subjects in your submission.

Mr BOULTEN: Youth justice conferencing should be encouraged. In the Northern Territory there is interesting work going on with youth justice conferencing, not just in remote areas but in Darwin and in Katherine and Alice Springs, where non-government organisations have been given funding to conduct youth conferencing services. For instance, the Jesuits are running a very successful youth justice conference system in Darwin. The North Australian Aboriginal Justice Agency [NAAJA] is about to commence youth justice

conferencing. Where there is a community-focused process that has local people, especially local Aboriginal elders, and victims of crime involved in the process of youth justice conferencing, the message hits home to the offender in a way that a 14-, 15- or 16-year-old just does not get when they are in an ordinary court. Where there is this sort of round the table, look people in the eye, come up with a solution cooperatively, then it is likely—and I think the statistics are starting to demonstrate—that the rate of reoffending goes down when people are meaningfully engaged in working out why they did something wrong, what effect it has had on people and how that impacts on others, and more just results are likely.

The CHAIR: The Law Society told the Committee that some magistrates hesitate to refer young offenders to diversionary programs if they perceive them to be poorly resourced or implemented. Do you have any comments on that?

Mr BOULTEN: I am sure that is true, although I do not have personal experience of it. But it does go to show that there does need to be both proper resourcing of diversionary programs, especially if they are run by non-government organisations, community-based organisations and, dare I say it, Aboriginal community-based organisations, and where there is proper auditing, proper judgement of the process that is involved. But you just cannot throw it open willy-nilly. There needs to be some real thought put into how it will operate, who is going to operate it; there needs to be guidelines sorted out in advance; and there needs to be proper oversight of what is happening in any of these programs.

Ms PRITCHARD: If I could make one small additional point in relation to that? One of the matters that arose frequently during the course of the deliberations of our joint working party, with the benefit of the experience of a number of judicial officers, was the lack of equal accessibility to diversionary programs across the State; hence recommendation 67 in our submission that there be a commitment to a principle of equal accessibility for children and young people throughout the State including in regional and remote areas to the full range of diversionary programs and services. We heard from numerous members of the working party, in particular the judicial officers, about the absolute absence of programs in rural and remote areas.

Ms JENNY LEONG: Would you expand a little bit more in relation to the data gaps that you talked about, because obviously some of this is in relation to a lot of the submissions we see that we are having a lot of trials, that there seems to be lots of positive support for some of the trials and programs that are run out in certain communities and certain areas, and the questions around them—how that data is captured, but also the scope of how long something that is a holistic approach around diversionary programs needs to last? Would you speak briefly in relation to those data gaps and also in terms of any other work or things within the criminal justice system that could be captured to assist in informing what future programs might be able to be delivered to assist?

Ms BASHIR: We based our submission in relation to data gaps not only on our own experience in trying to get the data to put into the submission but also on a symposium and some speeches that the Law Council held into Indigenous sentencing and alternatives to it some years ago where there were presenters from the Australian Bureau of Statistics [ABS] and the like, who all complained about data gaps—in particular, in relation to the juvenile justice system—and it is from beginning to end. It is even in relation to how many juveniles are in custody at particular points in time. Only some rates are measured, not on a flow through rate, which is different from a daily imprisonment rate. Our understanding is that the estimates that you have are gross underestimates of the number of Indigenous people and juveniles in detention.

It also goes to courts, outcomes in courts, police and policing, whether Indigenous people or juveniles are being given warnings, cautions, and the like at that front line, and it certainly includes diversionary programs. There was some analogy to health and the like and would there be funding permitted with those big data gaps in publicly available bodies. There are just simply huge gaps across the board. In regard to how you collect the data, what kind of data should there be and the like, we are not the experts in that region. There are certainly experts who could tell you. But it has been looked into and there have been noted to be gaps across the system, particularly in relation to juvenile offenders. Part of that also is probably because of the non-publication around orders. It is very important to preserve non-publication for orders for young offenders, but part of it is because of that. Is that what you were going to say?

Mr BOULTEN: I was going to say that the ABS are the ones to speak to. They are the people who raised this problem publicly and they know whether there are gaps better than we do. But the Bureau of Crime Statistics and Research [BOCSAR] also would be well aware of some of the gaps. Between the pair of them they would be able to point the Committee towards the real red spots or hotspots.

Ms JENNY LEONG: Thank you. I appreciate it. I should have said at the beginning thank you for establishing the committee or working party that you discussed. It is really reassuring to see that level of connection and recognition of the representation or overrepresentation of Aboriginal people within the criminal

justice system. You mentioned the issue of young women and girls and the need to look further into that area. I ask that in the context of the Committee having visited a number of juvenile justice centres where, on the whole, it is a young male population. The young girls, if they are from regional areas, are put into detention and are kept in what is called an isolation cell until they are moved to Reiby. They do not have the benefit of being as close to family or country as they otherwise would have. They also complained that they do not have the same internet access or educational access that the young men have. You mentioned specifically the need to look into that. I wonder whether you have any suggestions or recommendations about what could be looked at in those areas to address the fact that it is a minority population, but that should not necessarily change people's rights and access to things.

Ms BASHIR: There are a couple of things to be said about girls: Acknowledging, first of all, in relation to separation from country, which means separation often from family and community—the girls in custody are a long way from country—there was a recommendation as far back as the Royal Commission into Aboriginal Deaths in Custody in relation to regard being had to where a prisoner might be housed and separation from country because of the repercussions that could occur. It is obviously a lot more acute in relation to young offenders. In relation to girls and women also, there is a history often—again, this is a generalisation but we know because of systemic factors and because of studies into domestic violence and the like—there is often exposure to domestic violence, homelessness, and mums in custody. There are a lot of those factors going on that are impacting on the young people.

We do think that in regard to reforms it can come back to some of the sentencing reforms that have been looked into by the Australian Law Reform Commission in its latest report and also in our submission to you. The recognition of systemic and background factors—for example through Gladue reports—will highlight a lot of these things for the courts at the point of sentencing. Our understanding is that in some cases, if there were diversionary or non-custodial options available closer to community, it may be that the girls who are in custody now may have been availed of them. They are being particularly impacted by that. It is just one example of how looking not just at the individual as is done in background reports at the moment but also at broader systemic factors can bring to the attention of judicial officers the needs of the individual.

Ms JENNY LEONG: My question relates to post-release bail accommodation. We have heard from a number of services but also from a number of young people when we were in the juvenile justice centres about the issue of accommodation and access to accommodation. I wonder whether you wanted to expand on that. Where do you think those gaps are and what needs to be done to address them?

Mr BOULTEN: I think there needs to be bail accommodation in various places and some degree of flexibility given to the functioning of those bail accommodation places. For instance, in New Zealand they have quite flexible arrangements whereby accommodation in the community can be bail accommodation, can be post-release accommodation and can also at times be used for care in the community for young people at risk. Often, as you know, they overlap. But that sort of flexibility can be quite cost-effective and it would allow the development of the sort of supported accommodation system in various towns and regions where it is really needed.

Mr EDMOND ATALLA: Your opening statement was very comprehensive and addressed, it seems to me, many of the questions I had. I am interested in pursuing your call for the expansion of the Youth Koori Court, particularly in other areas and regional areas. Can you elaborate on why you have made that call?

Ms BASHIR: We understand that the Youth Koori Court has been recently reviewed. The results of the review were not available to us at the time that we wrote our submission. Hopefully, Judge Johnstone was able to inform you about that earlier this morning. Our understanding anecdotally is that it has been successful, particularly in relation to reoffending. But something like a Youth Koori Court or any sort of court that has therapeutic aims, just like the conferencing, means that there is a much closer engagement with the offender. There is more supervision available because it can be closely supervised by the court. There are also elders involved in the process. There is also an adult court proposed, a Walama Court, that we understand is under consideration.

Given that sentencing principles relating to youth do not just cut off at the age of 18, although we understand that that is your remit, it is important to include that in consideration as well. But in relation to the Youth Koori Court and expanding it, I think that Judge Johnstone has relied on justice reinvestment principles in relation to how to fund that as well. Thinking about traditional court and how it works, traditional courts, even in the Children's Court, the magistrate sits where the Committee is sitting, the legal representatives sit where the witnesses are sitting, and the child sits behind the legal representatives. The child is spoken about in the third person as "the offender" or "the young person". People are doing reports and the like. The engagement in terms

of the kinds of engagement that kids are used to—that is, face-to-face contact with parents, mentors or the like—just does not happen in court. It is a wholly foreign jurisdiction.

Of course, it is useful and it has its uses—particularly at the more severe end of offending—but in relation to something like the Youth Koori Court it can really draw the child into the process. I am not sure with the Youth Koori Court whether victims are present or not. I assume that they are, and that can have a huge impact, because kids might not really understand the impact of what has happened until they hear it. You can see profound transformations in those courts. If you ever have the opportunity to go and see it in action—

Mr EDMOND ATALLA: We are going to go and see it.

The CHAIR: Yes. We are booked in to go in a couple of weeks' time.

Ms BASHIR: It is so different to a normal courtroom setting. Even the adult drug court, for example, has a therapeutic approach and therapeutic objectives. It means that there is real engagement and real involvement from the offenders and the young people who are involved. They establish relationships that they do not want to break or breach. In Youth Koori Court they have elders—people from the community—and it is just a completely different form of engagement. Where it hits is in reoffending, and that is really the most important thing.

Mr EDMOND ATALLA: Other than funding, are there any barriers that you see in increasing the number of Youth Koori Courts?

Ms BASHIR: Often there are political arguments which address what we call "formal equality"—"Is this a two-tiered system?" and the like. The Australian Law Reform Commission [ALRC] has addressed that in their report, and we absolutely support what they say about substantive equality. If you have a system that has these rules and laws, and these rules and laws are applied to everyone it is a one-size-fits-all. When you have individuals—in particular kids from difficult communities—coming into contact with the system, you need to have a system that has as much discretion to deal with those kids in a way that is going to see them not reoffend and go forward. It is going to have an impact on the adult system as well.

So really there does need to be an understanding of the social, economic and family factors that are going into what is happening in this young child's life. Substantive equality is what lawyers mean when they talk about equality before the law, not formal equality. It means taking into account the differences and accommodating those differences within the process. It is not a racially different system; it is the same system but taking into account the differences. We know, because of the acknowledged over-representation in the gaol system, that there are differences for these offenders.

Ms PRITCHARD: One small qualification is that participation in the Youth Koori Court is presently consensual. It ought continue to be so. The consultations undertaken by Justice Johnstone suggest that the Redfern, Glebe, La Perouse and Dubbo communities are very keen to see the expansion of the court to their communities in particular. There is no reason to think that other communities would not be equally interested, once consulted properly about the process.

Ms BASHIR: We saw this with the Drug Court, too, where admission was confined by geographical area. It really operated unfairly for people who were outside of the regions, because they could not get in. So we absolutely support expansion of the service.

Ms STEPH COOKE: The Committee has heard that programs that exist in regional New South Wales tend not to be culturally appropriate for Aboriginal people. Do you have any comment? Is there a need for more programs to incorporate elements of Aboriginal custom and law?

Mr BOULTEN: Yes. In fact, there needs to be serious consideration given to getting local Aboriginal communities involved in formulating diversionary programs, administering them and being involved in the whole process when they are properly trained and properly assessed as being capable of delivering. I think everybody needs some training in cultural issues. Looking around the room there is not, I presume, one single Aboriginal person here today. Although we are really interested in this whole process, we all have a very limited understanding about what Aboriginality really means in New South Wales to a particular person in a particular place.

The CHAIR: Justice Johnstone pointed out that to his knowledge there was only one Aboriginal magistrate in New South Wales.

Mr BOULTEN: That is what I understand.

Ms JENNY LEONG: Can we touch on that for a second? I was reminded when I heard that said earlier about a completely different context—the Cancer Council NSW saying that there was an absence of

people returning to specialist cancer treatments from Aboriginal communities, partly because, they believed, the people providing the care—the experts in medical care—were not Aboriginal and did not have a cultural awareness and understanding. So people were not accessing potentially life-saving treatments as a result of a lack of cultural awareness not because of a lack of ability to access medical care.

Do you think that it is important? How do you think we could look at the representation at the Bar, in our judicial system and in our legal system, and at what could be done to improve that? We recognise that identity, representation, reflection and understanding of culture is important. Do you have recommendations about how we should address that?

Mr BOULTEN: Sure. There are people who can train people about Aboriginal culture, and there are courses that are conducted. I think judges go to these courses. I know that in the Northern Territory every lawyer that works for the North Australian Aboriginal Justice Agency [NAAJA] is trained in the cultural norms of the communities in which they will work. But it is not just training; we need, as a profession, to do everything we can to encourage and then mentor Aboriginal law students, Aboriginal law graduates and people to practise at the bar and then, ultimately, to become judges and magistrates.

The New South Wales Bar Association is doing what it can in this regard. We do have a mentoring scheme that was developed in conjunction with the Supreme Court and with the Federal Court in Sydney, where, admittedly, a limited number of law students take on internships, sitting with judges and following barristers around while they do their practice. We have an Aboriginal Lawyers Association, which has existed for many years, that is attempting to encourage people to take on jobs as lawyers and to take on responsibility in the legal profession. It is something that will take decades and lots of application.

Ms PRITCHARD: There is also a First Nations Committee, which is chaired by Aboriginal silk Tony McAvoy. In relation to the specific question concerning magistrates and, perhaps, District Court judges, that is in the hands of the Government, which advertises for and makes those appointments.

The CHAIR: We will accept some responsibility there.

Ms PRITCHARD: An extremely competent, extremely accomplished Aboriginal solicitor with whom I have worked for many years has on a number of occasions applied for an appointment and has been unsuccessful. Perhaps something more affirmative in the nature of appointment policies for magistrates and District Court judges.

The CHAIR: When I was Police Parliamentary Secretary, I saw the Indigenous Police Recruiting Our Way Delivery [IPROWD] training program that inducts young Indigenous people through TAFE for entry into the police academy and its success. I saw that success a number of years ago when there was community concern in Redfern with certain incidents. I attended the graduation of half a dozen young men and women and their parents were extremely proud and the whole community was proud. I concur with that.

Ms BASHIR: In addition to the Bar Association program that Mr Boulten has spoken about, there is another Indigenous mentoring program that has been operating for a number years run by Chris Ronalds. That has been going on for a number of years. Another thing is keeping people as solicitors and barristers once they are there. It can be very difficult and disheartening, we have to acknowledge, being an Indigenous lawyer. Anecdotally I know of a young, very talented solicitor who went into court, was acting as a solicitor, sat down and was told she should not sit at the bar table that was for solicitors, based solely on her appearance. She did explain that she was a legal practitioner and sat there, but the impact of that, particularly if it occurs on more than one occasion, is disheartening. It is important that there is support and encouragement from the Bar and we acknowledge that and within the Law Society to keep people within the profession. That brings me to training of judicial officers. We like to think we train our members in relation to cultural sensitivity and we have addressed it in relation to the involvement of Indigenous elders in the Walama Court and the Youth Koori Court.

Ms STEPH COOKE: The Law Society has called for a special provision in the Young Offenders Act to state that a person must not be arrested unless there is no other appropriate way of dealing with him or her. Would you agree with that ?

Mr BOULTEN: I think that is almost the law now. That is certainly advisable that arrest is the last resort.

Mr DAMIEN TUDEHOPE: In 2011 the number of young people in juvenile detention centres was in excess of 550. It is now down to 300. What have we done right?

Mr BOULTEN: I think the number of people who are offending is one of the real issues. People are being caught but the crime rate is either stable or reducing. Maybe that is something. The Chief Magistrate or the President of the Children's Court would like to point towards the success of the Youth Koori Court, the

diversion programs, the youth conferencing programs and the general attitude of the specialist Children's Court to imprisonment or detention being the absolute last resort. I think that is right, that is the right road.

Mr DAMIEN TUDEHOPE: In a sense, the adult offending and imprisonment rate has increased. We have gone from 9,500 to 13,000 with adult offending and incarceration, but juvenile incarceration has reduced.

Mr BOULTEN: The press or the constant push for higher penalties and the constant push for inflexible sentencing regimes has not touched the juvenile sphere in the same way it has the adults. That is all for the better, to be frank. If we can get results in the Children's Court like the one you have pointed towards, then it rather tends to suggest that there are 200 kids less every year—probably more than that because it is 200 net every year—that are not being exposed on a regular basis to the sorts of influences that you get when you are locked up with naughty kids. That university of how to commit crimes is the breeding ground for trouble when you are 19, 20, and thereafter.

Mr DAMIEN TUDEHOPE: You made a reference to the Closing the Gap targets. As a point of interest, New South Wales has committed to the Closing the Gap targets. I think you will find it is Western Australia that is the Council of Australian Governments [COAG] bulwark?

Ms PRITCHARD: I apologise, I was under a misunderstanding.

Mr DAMIEN TUDEHOPE: The problem with Closing the Gap is that you need all the Attorneys to agree on the target. This jurisdiction would be committed to a Closing the Gap target and reducing (a) the proportion of Indigenous people in incarceration; and (b) the reoffending rate.

Ms PRITCHARD: That is gratifying to hear.

Mr DAMIEN TUDEHOPE: It has been a point of controversy. Have you had any experience with the suspect target management?

Mr BOULTEN: We have.

Mr DAMIEN TUDEHOPE: You did not address that specifically in your submission. Have you had personal experience with the people you have represented or, alternatively, direct knowledge? We do not have any input from the Police about justification for that plan or program, but some of the advocates that have appeared before the Committee seem to have a dim view of how it operates. What is your view?

Mr BOULTEN: I have to be honest, I have not got anyone I have represented who has been targeted. Ms Bashir has been involved in discussions about this topic.

Ms BASHIR: I have. I cannot speak for the Police Commissioner. I understand that the STMP is a matter of concern to the Bar Association. It is a matter of concern to the Law Society. We have raised our concerns directly with the Police Commissioner. My understanding is that it is being looked into, particularly in relation to how young the young people are.

Mr DAMIEN TUDEHOPE: A nine-year-old was mentioned.

Ms BASHIR: At the moment the criminal age of responsibility is 10. As we have indicated in our written submission, there is disproportion in terms of the attention given to younger Indigenous offenders. If you are Indigenous you tend to get attention younger than if you are not. It does need to be looked into. I do not feel I can say anything about the conversations that I have had.

Mr DAMIEN TUDEHOPE: In a discussion earlier today with the Children's Advocate, he gave an example of an eight-year-old potentially the subject of one of these plans. The eight-year-old allegedly was involved in drug distribution within a school. That is why the plan was put in place. Sure, he does not have capacity, but as a crime prevention tool I am interested in what view you would have in relation to its effectiveness or otherwise and the impact potentially on offending?

Mr BOULTEN: Identifying troubled and troubling offenders is the police officer's job. But to profile people and then to target them because of it is a very personal and personalised form of policing. It is one thing if the person being targeted is able to deal with and understand why it is that they are picked on but it is another thing altogether if they are a child, because children do not have the capacity to make the same conclusion so easily and judge things effectively. Almost always when someone is being picked on, whether it be in a schoolyard or by the schoolteacher or by the police, there is always going to be a reaction and it is not going to be a positive reaction most of the time. If there is to be targeting of troubled youth, then it needs to be nuanced. It needs to keep in mind what are the most effective ways of coaxing someone out of a troubled existence, rather than simply just rotating them through the court system or rotating them through punitive action.

Ms BASHIR: And having the direct attention of the police, that is the manner of the disruption that comes with the STMP. When talking about an 8-year-old or a 9-year-old, the law presumes no capacity. It presumes that someone of that age does not know the difference between right and wrong, and then there is a presumption of that going all the way up to age 14. If the law is actually acknowledged and given effect, what is the STMP doing by having police involvement at that early stage, police disruption and targeting of the young person as opposed to looking at the family situation, looking at the community situation, trying to encourage the young person to be involved and socially more proactive or having better mentors away from that, but otherwise than through police attention.

Mr DAMIEN TUDEHOPE: A lot of attention on the diversion programs obviously deals with the offender. Often a problem exists with potentially the family, whether it is an abusive family where the offender has been the subject of abuse. Some of our experience has also been that there are people who are in juvenile detention centres and when their term expires they do not want to return to those communities. In fact, what happens is they are returned and they get into the cycle of friendships or whatever it is. What is your view in relation to how we should be dealing with the larger problem of potentially the communities which become havens of crime?

Mr BOULTEN: I think the responsibilities should be shared within a community. If the community is a problem then the community has to come up with answers and they need to take responsibility for some of these problems—personal, individual responsibility and collective responsibility.

Mr DAMIEN TUDEHOPE: How do you do that?

Mr BOULTEN: By putting some power into their hands. By saying, "Okay, what is your answer to the solution?" There is a crossover, as we all know, between criminal offending and kids at risk. The care and protection of children in the community is a big issue. For Aboriginal communities, there should be Aboriginal-based answers to providing for families who are in trouble and kids who are at risk. In this State, the Department of Family and Community Services is doing great work on trying to figure out how to come up with a whole-of-family solution for Aboriginal families that are in crisis. In Victoria, the Aboriginal child care agency is a government body which has local officers in many communities throughout the State where they talk to local communities and find out where the problems are.

They talk about what programs are likely to be successful, as has happened in Bourke, where there is discussion about whether or not this sort of drug rehabilitation program is required in this community or whether this sort of mothering class would work in this community, and where people are referred through this system to locally driven, supported and run organisations providing real services. The same could apply for juvenile justice. That is what is happening. That is what the Northern Territory is looking at at the moment to try to come up with a crossover system where there is real cooperation between the people who deliver childcare services on the one hand and juvenile justice diversionary programs on the other, but where local communities are involved in the process, where they have got people on the committees, where they are given proper training and resources and where they craft something that works in their own place.

Mr DAMIEN TUDEHOPE: One of the problems that often exists in relation to that model is disagreement about who is the elder and who speaks for the mob and that sort of problem.

Mr BOULTEN: Sure; I understand that.

Ms JENNY LEONG: Unlike government where we always agree.

Mr DAMIEN TUDEHOPE: That often becomes an impediment to getting that sort of model to work.

Mr BOULTEN: I can tell you that having none of them involved is worse. If they are not involved, then it is all your people's problem. That cannot go on. People have to step up. If there are differences in community over who controls it, then people have to work through it. There has to be some sort of mediated program to make sure that people from different families or different clans or whatever know that they have to work with each other.

Mr DAMIEN TUDEHOPE: That is one of the problems sometimes with the Youth Koori Court, when you put it together, whether it is a representative group of people who have the authority to speak on behalf of the community.

Mr BOULTEN: It should not be seen as a disentitling factor. It is a factor that needs to be worked through rather than discarded.

Ms BASHIR: Can I add to what Mr Boulten said? He mentioned Bourke. Just Reinvest is doing incredible work up there. It has had an impact on changing policing and policing methods, particularly as to how

they approach domestic violence and domestic violence offenders, which, again, has had a huge impact on offending rates. Having a look at the ALRC recommendations again, they have recommended that there be a national body set up in relation to justice reinvestment, and one of our recommendations is that New South Wales should support that. Bourke has been a huge success story. For example, if the driving lessons are an issue because people cannot get licences and the like, they will try to help with getting a driving instructor for the community. It can be as simple as that.

Mr DAMIEN TUDEHOPE: There have been whole towns where no-one had a licence but everyone had a car. At one stage we were going to give everyone a licence.

Ms JENNY LEONG: I am aware of the time, but it would be good to get on record—and I am happy for you to take it on notice—what the Bar Association's position would be in relation to the STMP, the program that we were discussing. It is being recommended by the Public Interest Advocacy Centre that the New South Wales police should discontinue applying that to children under the age of 18. I appreciate that may take more consideration. I have just scanned my document, so I am not sure if it is in your submission already. It would be good to be able to get your position and thoughts on that recommendation.

Mr BOULTEN: It is paragraph 65.

Ms JENNY LEONG: Thank you kindly. Apologies for missing paragraph 65.

Mr DAMIEN TUDEHOPE: Ms Pritchard, can you read what the recommendation is?

Ms PRITCHARD: It is our recommendation No. 65, "the use of STMPs be discontinued in relation to children and young people, in particular, those young people participating in the Youth Koori Court and undertaking diversionary programs".

Ms JENNY LEONG: I appreciate you clarifying that and putting it on the record.

Ms BASHIR: I am happy to clarify that it is my understanding that that has not happened. Although police are looking at the STMP—

The CHAIR: It is under consideration at the moment.

Ms BASHIR: —know that it is continuing in relation to young people.

Ms JENNY LEONG: Yes, there have been no changes so far as anyone has discussed today.

The CHAIR: I have one final question. You supported increasing the age of criminal responsibility from 10 to 12. Given that there have been cases of extreme serious offending by children under the age of 12, how does your recommendation sit with other considerations like community safety and the prevention of individual activity in such cases?

Mr BOULTEN: There are kids who do things very badly who are younger than 12. It is still the case that those kids do not have the same cognitive abilities as adults let alone most other young children. The more and more we learn about the brain and how it operates and how we function cognitively, the more we all get to understand that people who are still only 10 or 11 have nothing like the same ability to be able to understand why things are wrong or how it is going to impact on other people if they do wrong things. In the vast majority of cases people who are 10 or 11 just do not have any clear understanding whatever of the consequences of their acts. They think it is just being naughty, if they think about it at all.

We are starting to understand how prevalent cognitive impairment is amongst our juvenile offending cohort and I am afraid to say that the more we learn, the more likely it is that we realise that the incidence of cognitive impairment in our juvenile offending population is extremely high. The Western Australian Government has just completed a comprehensive survey of all of the kids that they have in their State in detention and they found that about 80 per cent or more of all kids—and these are not 10 and 11 year olds but all kids—in detention have some form of cognitive impairment, whether it be attention deficit hyperactivity disorder [ADHD] or brain damage. We are now becoming aware of the incidence of foetal alcohol syndrome disorder. These issues have a real impact on our society.

For those reasons there is now a very settled view amongst academics—legal academics, practising lawyers, psychologists, psychiatrists and the medical profession—that people who are 10 or 11 just are not in the same category as older kids. The Don Dale Royal Commission has just recommended that the age of criminal responsibility be increased to 12, with a rebuttable presumption for 13 and 14 year olds. As a profession we are very strong on this issue.

The CHAIR: Thank you, Ms Pritchard, Mr Boulten and Ms Bashir for coming along today. On behalf of the Committee I thank you for your detailed response and informative evidence today. The Committee may

wish to send you additional questions in writing. The replies to those questions will form part of your evidence and will be made public. Would you be happy to provide a written reply to any further questions within five business days?

Mr BOULTEN: Yes, Mr Chair.

The CHAIR: I place on record my thanks to all the witnesses who appeared today. I thank the Committee staff, Committee members and Hansard for their assistance in the conduct of the hearing.

(The witnesses withdrew)

(The Committee adjourned at 17:23)